

THE
CLERGYMAN'S
Vade-Mecum:

Or, An Account of the
Ancient and **Present**
Church of *England*;

THE
DUTIES and RIGHTS
OF THE
CLERGY;
AND OF
Their Privileges and Hardships.

Containing
Full Directions relating to *Ordination*,
Institution, *Induction*, and most of the
Difficulties which they commonly meet
with in the Discharge of their Office.

the Sixth Edition, Corrected.

*Fear the LORD, and honour the Priest, and give
him his portion, Eccles. viii. 31.*

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in St. Paul's Churchyard, and SAM. BALLARD
in Little-Britain. MDC XXXI.





TO THE
CLERGY.

Reverend SIRS,



HIS following Collection was chiefly intended for the Information of young Students in Divinity, that they might not be too much interrupted in their Labour about Things of greater Consequence, by Enquiry into the *Secular State of the CHURCH*; and that even those who are of greater Maturity of Age and Knowledge, might have, as 'twere, an *Index* or *Remembrancer* in those Matters, which no Clergyman, I suppose, makes the chief Subject of his Studies.

The Observations with which I here present you, concerning the *External Constitution of the CHURCH*, are chiefly taken

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ken from *Bede, Acton, Lyndwood*; and of the Moderns, especially Bishop *Stillingfleet*, tho', as occasion serves, I have quoted many others: Nor have I satisfied myself with the bare Office of a Compiler, but, when I thought fit, have offer'd my own Judgment too. When I meet with any Point not agreed by Great and Honest Men, or in itself uncertain, I have left it as I found it: But where I saw that they who doubted, had no Reason for it, but the Mistake or Prejudice against the CHURCH or CLERGY, there I have not stuck to give my own Opinion, and my Reasons for it.

But the greatest part of this little Book consists of Directions in Law, relating to Church Affairs. I wish there had not been occasion for me to be so large in these Matters: But one of the greatest Temporal Difficulties, that belong to the Profession, is, that you are under such a Multitude and Variety of Laws and Rules, and those of a different sort, *Eccllesiastical* and *Civil*, which do often interfere, and clash with one another; inso-much, that the most learned Lawyers in many Cases, are not yet agreed, as to the Rights and Duties of Church Men; and you will find, by several Instances, in the fol-

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following Papers, that what has sometimes been pronounc'd to be Law, has at other times been deny'd to be so.

Your Office and Tenure is limited and restrained by so many Conditions and Qualifications, that a Gentleman may more easily settle himself in a Post of the greatest Honour and Profit in the State, than a Clergyman can get a legal Title to a Vicarage or two, of 30*l.* *per Annum* in the Church.

And when you are, according to all the Punctillio's of the Law and Canon, possess'd of a Maintenance, yet you daily find occasion to exercise your Patience, in submitting to the Impositions of others; or to shew your Prudence and Courage, in defending your own and the Church's Rights. For I think it may be justly said, that no Order of Men in this, or any other Nation, are under so fatal Necessity of frequently disputing their Rights, or being abused, as you are; especially Vicars and Rectors of Parochial Churches.

I am sensible, that too many, without Cause, have charged the Clergy in general with such Crimes, which as they are odious in all, so especially in those of your Profession, I mean Litigiousness and Rigour in demanding their Dues: Nor is

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at the Clergy of this Age, but those of the Ages past, that have lain under this Imputation ; which plainly demonstrates the Falsity of it : For there are not many Benefices, which are not considerably lessen'd, by the want of Care and Exactness in those who have formerly enjoy'd them ; and there may, upon occasion, be great Number of Instances produc'd, of Livings, which in former Ages had all Tythes paid in Kind ; and which, if they were now so to be paid, would be worth several Hundreds by the Year ; which since that, by reason of Compositions, made between the Incumbents and Parishioners, and in Tract of Time turn'd into unalterable Customs and Prescriptions, are reduc'd to so small a Value, that they will scarce afford Maintenance to a single Man. For, granting that in some Parishes there were from the beginning, some *Modus* agreed to be paid in lieu of Tythe, yet it is certain and demonstrable, that in very many, not to say most, Parishes, these Prescriptions and Customs grew from voluntary Agreements ; and yet in these very Parishes, if the Incumbent be strict in demanding his *Modus*, tho' perhaps it is but a Groat or Two Pence, where Two or Three Shillings were

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were originally his Due, both he and his Order shall be exclaim'd against, for Extortion and Oppression: when yet, if the former Incumbents were such extream Exactors of their Rights, as some would have them thought, these Customs and Prescriptions could never have prevail'd. And if the present Incumbent sink his Two Pence or Four Pence into half that Sum, and *bring his Noble to Nine Pence*; yet if that be strictly insisted upon by himself or Successors, they shall be thought covetous and griping: of which I know several Instances. And yet, in too many Places, the Poverty of the Benefice, if there were no other Cause for it, would even compel the poor Incumbents to insist upon his Rights, to keep himself and his Family from starving.

But farther, the Nobleman, or Gentleman often receives Thousands by the Year, from fewer Hands than the Vicar his three or four Score. I know some Places, where a less Sum than this is paid to the Vicar, by near 200, I may say 500 several Persons. Among so many, 'twere strange, if they were not some troublesome and injurious: And if there be one such in a Parish, the Vicar must have to do with him. He cannot chuse his

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Dealers, as others do, but must accept them for his Pay-Masters, whom the Landlord takes for his Tenants : And there is many a one, who is aw'd into Honesty by the Greatness and Riches of a Landlord, who yet knows himself to be more than a match at Law for his poor Vicar, and uses him accordingly.

And your Case is the more hard, because your Education is such, as that, generally speaking, you know nothing less than the Law; but employ your Lives in more generous and sublime Speculations: And therefore, no wonder if sometimes you judge too favourably, and at other times too hardly, in your own Case. 'Tis the Design of these Papers, to give such Directions in these Matters, as may prevent your making any false Step, in disputing your Rights. The Collections, in relation to the Law, are from a few Books of the best Reputation on this Subject, viz. Bishop *Stillingsfleet*, a Person of the most Universal Knowledge that this last Age has produced; Dr. *Godolphin*, who made this the Study of his Life, and whose Book (called *Repertorium Canonicum*, or an *Abridgement of the Eccles. Laws*) is well esteem'd of by the Common Lawyers; and Dr. *Watson's Compleat Incumbent*; which

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which, as it is the last Book of this kind, so it contains the greatest Variety of Cases in most Points, that can concern a Clergyman. When I speak positively of any Matter of Moment, I vouch my Author, except it be in things commonly known, and where there is no Dispute; and in Law Matters, seldom any but these Three before mentioned. For I thought it equally unreasonable to assert Things which depend wholly on Authority, without mentioning the Books from which I had them; and to send a Clergyman to Two or Three Hundred Law Books, to prove the Truth of what I say. My Reader is not to expect Variety of Cases represented at large, as in those larger Volumes: 'Tis sufficient, if he have all, or most of those Conclusions and Judgments in Law briefly represented to him, which it chiefly concerns him to know. I have endeavour'd, as far as was possible, to lay aside all Terms of Law, and to explain most of those which I am forc'd to use. For 'twas not my Intention to make my Reader a Lawyer, but to render him more capable of acquitting himself as a Clergyman.

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And yet I cannot but think, that it would be much for the Benefit of the Church, if Clergymen knew more of the Law than they generally do; and 'tis evident, they would find it more useful to them, than several of those *Sciences* which they are taught in the *Universities*, 'twould save them many a Counsel's Fee, and secure them from being imposed upon by trickish Parishioners. Not that I would have any of the Holy Order *interfere with Scriveners, Proctors, or Solicitors*, or descend into the Row of *Pettifoggers*, much less that they should study that Art which is the Masterpiece of the last mentioned sort of Men; namely, *to make a long Bill, and extort unreasonable Fees*, from those that are too poor and ignorant to dispute the Point with 'em. A Clergyman will find, that there is little to be got by this, but an ill Name: But I mean, that they should make themselves so far acquainted with the Law, as to understand their substantial and valuable Rights, and every Part of their Legal Duty, that they might more effectually secure the one, and discharge the other; but never be tempted for a little Lucre, to do any thing below the Character and Dignity of their Order.

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'Twere indeed very desirable, that all the Law that does any ways concern *Churchmen* were drawn up in one moderate Volume, and in such a Manner, that those who are not acquainted with the *Phrases* and *Terms of Art*, might yet understand it. This is an *Essay* toward that Design, and with the Additions and Amendments which you'll find in this *Sixth Edition*, if it do not wholly answer the propos'd End, yet, I think, I may justly say, it bids very fair for it : at least it may serve as a *Direction* to any *Private Clergyman*, by giving him an Idea, not only of our whole Constitution, but of that Station which he has in it.

There is nothing has more convinced me of the Necessity of some Books of this kind, than a late Pamphlet call'd, *The Parson's Jewels*; wherein the Author, [Mr. Morgan, who styles himself *Vicar de Jure*, of *Llhan tri sanct*, in *Comitat' Glamorgan*,] pretends to go no farther, than to direct a Clergyman how he may qualify and settle himself in a single Benefice; and yet is guilty of so many Mistakes, in imperiously telling his Reader, that he *must* do many Things, without giving any Reason but his own Word for it; and, on the other side, forgets other things of greater

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greater Consequence; that if any young Clergymen, believing this Confident Assertor, and taking him for their Guide, should follow his Directions, they would lay an unnecessary Load upon their own Backs; when the Law has already laid more than enough; and yet at last find, that his Instructions are short and defective.

He advises his Clergyman, “ To have
“ a publick Notary along with him to
“ the Bishop, to attest his Institution;
“ and both a Notary Publick and an Attorney to be present at his Induction,
“ &c. I suppose, because the Charge of Institution and Induction are not great enough already. ’Tis certain, there is no other Reason for it. The Law will take the Attestation of any honest, understanding Man, as well as of an Attorney or Notary.

He supposes, the Witness must swear, That the Clergyman read *every Syllable* of the Liturgy and Articles, &c. *and did not mispronounce one Word*, p. 6. Who told him so? If this were Truth, the Witnesses who were in such a Case to make Oath for a *Welchman*, or Foreigner, would be hard put to it, if the Liturgy be to be read in *English*.

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He tells us, the Witnesses *must understand Latin, because otherwise they cannot Swear, that you read the Latin Certificate,* p. 6. By what Law, or Canon is the Clerk bound to read his *Latin Certificate?* 'Tis certain, by none at all; except it be one of Mr. Morgan's making. *He, indeed, that had been Ordained by some other Form, than that of the Church of ENGLAND,* was bound by 13 Eliz. not only to read the Articles, but a Certificate from the Ordinary, of his having subscribed them; but that was only for *such Ministers, and for that Time:* And 'tis now sufficient to subscribe them before the Bishop; and read them, and give Assent and Consent before the Congregation; the having a Certificate of it is not prescribed by the Act, much less the Reading of it.

But he tells you, the Witnesses *must understand Greek too; How else can they swear, That you read the two Greek Words?* Artic. 9. p. 6. I answer, by having them writ in vulgar Characters in the Margin, thus, *Frønema Sarcòs.* The Law is so far from obliging the Witnesses to understand Greek, that the Clerk himself is not bound to know so much as the *Greek Alphabet.* The more is the Pity.

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He advises the Inducted Clerk, *Page 4. To keep the Key of the Church, if he expects any Contest.* As if, when the Title to a Benefice were disputed, the Law would give it to him who had the strongest Arm, or the greatest Sleight in holding fast a Key. No, assure your self, the Church may be sued from you, tho' you have the Key never so close in your Pocket.

'Twould be lost Time, to mention all the little Niceties about Induction, on which he lays so great a Stress; his enjoining his Clerk, to give Assent and Consent to the Liturgy three several Times; and to *Hold up the Book of Common-Prayer*, every Time he does it: And moreover, to be at the Expence or Trouble of giving Copies of his Certificates to every Witness; all which Particulars, seem meerly invented to stuff out a thin Pamphlet.

But above all, he charges his Clergyman over and again, *To receive the Sacrament, and take Certificate of it, against the next Quarter-Sessions*; in order to take the Test: And he would make the Clergyman believe, that except this be done, *He hazards all*, *Page 3.* He ought to have given some Reason for it, but that is not his Way; nor indeed is there any Reason

to

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to be given for what he says on this Head ; but of this, and all other Matters he treats of, see *Chap. 9.*

And yet, after all, he forgets to remind his Clerk of taking the *Abjuration Oath* ; as if the Act of Parliament, by which this is enjoin'd, were not yet received in *Wales.*

There is one Advertisement, which I doubt not, but that all will agree to be very pertinent ; *That when your Instruments are ready, you are to pay for them.* But tho' this be much to the Purpose, yet there is less Fear that this should be forgot, than any thing else ; because there will be so many about the Clerk at his Institution in the Ecclesiastical Court, ready to refresh his Memory, if he should be willing to forget this Particular. I should rather caution my Reader, that he don't overdo, and pay too much ; but remind himself and the Officers, of the Clauses in the Act against *Simony* ; which see *Chap. 11. Art. 5.*

And having used my best Endeavours to present the Clergy with a clear and distinct View of what is due from them to others, and from others to them, by our Laws, as they stand at present, so far as was possible in so small a Sketch ; I wish
it

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it were in my Power to remove those false and foolish Prejudices, which too many of the Vulgar have entertain'd in relation to *the Clergy* and their *Rights*. And one would think, that to mention them were an effectual Confutation of them.

Such, in the first Place, is the Conceit of those, who think a Clergyman guilty of Covetousness and Extortion, if he require the Tythe of such Things, as his Predecessor did not, or a greater Compensation for them: As if the Neglects, or Oversights of a Predecessor were any real Bar to the Right of the present Incumbent: If, indeed, a Clergyman be cut off from his Rights by any old settled *Modus*, or Prescription, he had much better be silent, than to raise a Storm to no Purpose; but if he be not, by what Law of God or Man, is a Clergyman forbid to pursue his Rights more than another Person: Nor can the Laity blame Clergymen on this Account, except they measure the Actions of themselves, and the Clergy by two several Rules; For why may not they, as well as others, *make the best of their own*, by all honest and legal Methods?

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'Tis certain, that, if a Clergyman be poor, and unable to do such Works of Charity as are expected of him, he shall be despised and even revil'd, as if he were guilty of a real Fault: And, yet, if he endeavour to mend this Fault by improving his Benefice, this shall be thought a greater. The Case is very hard: For 'tis Criminal for you to be poor, and yet 'tis more so to grow rich, especially, if this be done by demanding your Ecclesiastical Dues.

If a Tenant, or Chapman, have made a hard Bargain, and hurt himself, 'tis expected, that you should make it easy by abating in your Tythes; and yet if you offer to raise a Tenant, whose Composition was before unreasonably low, the Landlord shall abet his Cause, and you shall be told by those who ought to know better, that 'tis unjust for you to take more for Tythes, than was paid before the Farmer took his Farm (except the Tenant before he agreed with his Landlord, were apprised, that the Tythes were to be raised). But as this is a Reason of no force in any Court; so when the Clergyman has got his just Right, let the Landlord be ask'd to abate so much in his Rent, as the Tenant has been raised in

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in his Tythe: And will he think it reasonable so to do? No, no, what is thought Reason and Justice, in relation to Clergymen, is not thought so when it comes to be the Case of another Man. Nor was it ever expected of any Men in the Earth but the Clergy, that they should suffer for the foolish Bargains that others make.

The young Academic, or Clergyman, may think that Men of such Notions are very rare, and that such Practices as these are too monstrous to be common; but in less than seven Years Experience, he will be convinced of the contrary, especially if he get into a Country Benefice. And tho' this Precaution can do no other good, yet it may fore-arm him against that Treatment that he is like to meet with. If by this, or any other Hints or Cautions given to the Clergy, I have, or shall do any real Service to the Church, and them, I have my End; For I am,

Their entirely devoted Servant.

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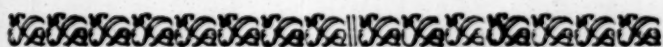
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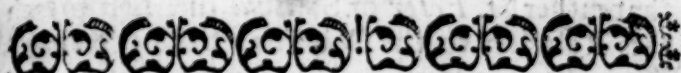
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T H E
CLERGYMAN'S
Vade-Mecum.

C H A P. I.

Of the Church of England, its Rise, Corruption, and Reformation.

A Vulgar Tradition has prevail'd, that *Christianity* was first planted here by *Joseph of Arimathea*: But this is a Story that has no antient or credible Author to attest it, and seems to have been invented by the Monks of *Glastenbury*, to raise the Reputation of their Monastery: For the Tale goes, that *Joseph and his Companions* had that place given them for their Abode, where they built a Church, which was consecrated by *Christ Jesus*, and by him dedicated to his Mother.

But 'tis on all hands allow'd, that *Christianity* was received here, during the Lives of some of the Apostles; and that at farthest within 61 or 62 Years after the Birth of *Christ*; as likewise,

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that

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that either *St. Peter* or *St. Paul* did first preach this Religion to the *Britains*. Bishop *Stillington*, after the Reverend *Dr. Cave*, gives it clearly for the latter, the Apostle of the *Gentiles*, who is said by *St. Clement*, in his first *Ep. ad Cor. c. 5.* to have preach'd to the utmost Bounds of the *West*. See *Still. Or. Brit. p. 38, 39.*

It is reported by *Bede*, who wrote in the beginning of the eighth Century, that *Lucius*, a *British* King, was converted to Christianity, *A. D. 156.* and Archbishop *Usher*, *de Primord.* mentions two Coins with the Effigies of a King, and a Cross, and the Letters *LUC*, so far as could be discerned.

About the Year 407. Christianity began to decline apace in this Country, by reason of the Heresy of *Pelagius* (a *Britain* born, but who spent most of his Life in *Italy*, *Africa*, and the East) which, as it spread its Venom far and near, so particularly amongst his own Countrymen: by this means the *British* Christians were divided amongst themselves; and at the same time they were invaded by the *Picts* and *Scots*, who inhabited the Northern Parts of the Isle. *Honorius*, the *Roman* Emperor, had just before recall'd his Legions, which had formerly kept the *Britains* in subjection to the Empire, but protected them against all other People; the *Britains* then were not able to defend themselves: The Emperor did indeed send them Succours once and again, but they were soon commanded Home; for he had enough for them to do there to put a stop to the Incursions of the *Goths* and *Vandals*.

The *Britains* being reduced to these Straits, are forced to accept the Help of the *English Saxons*, (who inhabited *Holstein* and *Futland*) a Heathen but Warlike People, who soon subdu'd the *Picts* and *Scots*, but then made a League with them against the *Britains*; and so made themselves Masters of the Country, and drove the *Britans* into *Wales* and *Cornwal*; to which Countries consequently Christianity was then confin'd, while Heathenism and Idolatry spread itself over the rest of the Kingdom.

A. D. 596, and 150 Years after the *English Saxons* first came into this Country, Pope *Gregory the Great* sent *Austin*, the Head of a *Roman* Monastery, with forty Monks, to instruct this Nation in the Christian Religion. The main Body of the People were converted in about 70 Yearstime, the *Isle of Wight* being the last Place that was reduc'd. *Bed. Hist.* l. 4. c. 16.

For near 950 Years we remain'd in Communion, or rather Subjection to the Church of *Rome*. *Austin* began to erect this Spiritual Tyranny, and Archbishop *Becket*, by dying a Martyr in the Pope's Cause, A. D. 1170, gave the finishing Stroke.

From the latter end of the Eighth Century, till the Reign of *H. VIII.* every House throughout *England* paid a Penny every Year to the Pope, this the *English* call'd *Rome-Scot* and *Peter-Pence*; the *Latins* *Denarius Romanus*.

It had been much better if the *English* had received Christianity from the *Britains*, if it had not been below Conquerors to be taught by those whom they had subdu'd. For they would have deliver'd this Religion to us without making us

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Slaves to the *Pope*, whose Creature *Austin* was; and the *British* Bishops were aware of this, and therefore opposed him, and adher'd to their old Customs of keeping *Easter*, and Baptizing in a manner somewhat different from that of *Rome*, and they continued their former Practice in the Year 731, when *Bede* finished his History; but in a short time after, the *Welsh*, as well as *English*, became entirely *Romanists*.

But by degrees we became sensible of our Servitude, and several hundred Years before the Reformation, many Laws were made to restrain the Pope's Power here in *England*: And at last, viz. in 1535, *Henry VIII.* a Prince of great Courage and Resolution, wholly renounced the Pope's Supremacy, as several *German* Princes had done before.

There were many other Errors which we had receiv'd from the Church of *Rome*, which were for the most part retain'd, and enforc'd with severe Penalties, during the Reign of *Hen. VIII.* But the same Year that he renounc'd the Pope's Supremacy, the whole Bible was publish'd in the *English* Tongue, as the Testament had been before in the Year 1527. and this had so good effect, that by the Year 1548, the 2d of *Ed. VI.* the generality of all Ranks of Men in *England* were convinced of the Errors of the Church of *Rome*, insomuch that an Act of Parliament pass'd for the *English* Service, and for Abolishing the *Roman* Worship. There was one thing which very much contributed to the speediness of our Reformation here in *England*, which was, that the People began to be very sensible of the value of Money: for many of the *Romish* Errors were
very

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very chargeable and expensive. But on the other side, they are very much to blame who represent our Reformers as Men who were act'd with a desire of Riches, which they hoped to get by the Spoil of the Monasteries and Church-Lands, rather than with the love of Truth. For Monasteries were suppress'd, and the greatest Ravages on the Church committed in the time of *H. VIII.* in whose Reign nothing was done towards a Reformation, but only that he had assumed to himself the Headship of the Church, and commanded the Lord's Prayer, Ten Commandments, and Creed to be taught the People in *English*, and the *English* Bible to be set up in Churches; and he who was the chief Mover in the Business of suppressing Monasteries, was the Lord *Cromwel*, who had learn'd this from his old Master Cardinal *Wolfey*, who had, by License from Pope *Clement VII.* pull'd down forty Monasteries, in order to erect and endow his Colleges at *Oxford* and *Ipswich*. But that you may know how far we were from Reformation in his Reign, 'twill be sufficient to mention the Six Articles, which every one that deny'd was burnt, by *Stat. 31. H. 8. c. 4.* 1. Transubstantiation. 2. Communion in one kind. 3. Unlawfulness of Priests Marriage. 4. Unlawfulness of breaking a Vow of Chastity. 5. The Lawfulness and Necessity of Private Masses. 6. The expediency of Auricular Confession.

Indeed the Reformation was never begun in earnest till the Reign of *Edward VI.* and then it was established. Queen *Mary* used all possible Means to nip it in the Bud; but her Time was short, and the Reign of her Successor Queen

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Elizabeth very long, in which the Reformation took such deep Root in *English* Hearts, that nothing (under God) will ever be able to subvert it, except our own Divisions.

C H A P. II.

Of the Doctrine of the Church of England.

SOME are of Opinion, that there were *British* Bishops at the Council of *Nice*: but 'tis sufficient that we are assured, from *St. Athanasius*, *Chrysostom*, *Jerom*, &c. that this Church receiv'd the Doctrine of that Council. See *Stil. Or. Brit.* p. 175.

There is no reason to doubt but that the *British* Bishops, who were at the Council of *Ariminum*, were Orthodox when they came thither, as the great majority of that Council declar'd themselves to be, while they were left to themselves; and what they did afterwards was extorted from them by the politick and oppressive Arts of the Emp. *Constantius*, and his Prefect *Taurus*; and our *British* Bishops were more expos'd to them than others, as being so poor that they were forced to accept of a Maintenance from the Emperor, during the time of their attending the Council; and yet probably their Bishopricks might at least equal the generality of our present *English* Bishopricks in their Income and Revenue: For too many of these latter are so very mean, that they are not sufficient to maintain those who are possessors of them, here at home. The Consequences of which may in time prove very fatal.

The

The *Pelagian* Heresy, as was before hinted, had spread itself among the *British* Christians; but they were resettled in the true Faith by *Lupus* and *Germanus*, two *French* Bishops: and when that Heresy began to get Ground again, it was a second time quelled by the said *Germanus*, and one *Severus* Bishop of *Triers*. *Bed. L. 1. c. 17. & 21.*

And even in the most degenerate Times of Christianity, the *English* Church was never corrupted to such a degree as some others; of which I will give two Instances, *viz.* that in *Scotland* it was carried by Vote, in a Provincial Synod, that *the Pater Noster* might be said to the Saints. *Archbishop Spotswood's Hist. p. 92. &c.* (tho' the President chanced to be a Man of better Sense than to permit it to be enacted): And that in *Germany*, Priests were openly licensed to keep Concubines; nay, at last they were obliged to pay an annual Tax to the Official for such a License, whether they made use of it or not: Of this the *German* Princes openly complain'd, in the Diet of *Noremburg. 1523*; and this is mentioned in two of the *Centum Gravamina*, *Grav. lxxv. and xci*, which may be seen in the *Fascicul. Rer. Exp.* and which we are assured by the Writer of the History of the Council of *Trent, L. 1.* were actually sent to the Pope: But it does not appear that ever such lewd Opinions or Practices prevailed in *England*.

The Doctrine of the present Church of *England* is in all respects Catholick and Orthodox. The *Nicene* or *Constantinopolitan Creed* is inserted into the most solemn Office of our Liturgy, and what has been adjudg'd Heresy by the *Four*

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first General Councils, is allow'd to be so, even by our Statute Law. 1 *Eliz.* 1.

Besides the *Creeds*, our Clergy subscribe to the Thirty Nine Articles of Religion, drawn up in Convocation, *A.D.* 1562. The greatest part of which are either Affirmations of some antient Truths, or Renunciations of the Errors of some old Heresies, or of the *Papists*, or some modern Sects.

Some would have it thought, that the 17th Article asserts the Doctrine of *absolute Predestination*, which was condemn'd in the 3d Council of *Mentz*, *An. Dom.* 848; and at several other Times and Places; but these Men are certainly mistaken: For that Article asserts *Predestination* in general Terms only, which all allow. The Question is, Whether God pass'd these Decrees *absolutely and unconditionally*? In this the Article is silent; and why should we understand it in the most harsh and severe Sense, when the Words do not of necessity import any such Meaning?

But it will appear unreasonable to understand this Article of *absolute Predestination*, if it be considered, that in the very foregoing Article it is expressly declar'd, that *we may depart from Grace given*; whereas they who are for the *absolute Decrees*, must of consequence assert, That *a Man cannot fall from Grace*: For if we may fall from the Means, we may also fall from the End: And if we are not *absolute predestinated to persevere in Grace*, we cannot be *absolutely predestinated to Salvation*: And indeed the *Puritans*, in the beginning of King *James the First's* Reign, were sensible that this Doctrine
of

of the defectability of Grace was inconsistent with their Opinion of *absolute Predestination*, and therefore desir'd that these Words might be added at the End of the aforesaid Clause of the 16th Article, *viz. tho' not finally*; but the King and Bishops would not hearken to it. See *Conference at Hampton-Court*.

Farther, our Church positively affirms, that *God the Son redeemed all Mankind*; which can never be reconciled to the Doctrine of *absolute Election and Reprobation*.

C H A P. III.

Of the Worship of the Church of England.

AS there is no room to doubt, bnt that every Church, as it grew to a Settlement, had stated Forms for celebrating the Sacraments, and other Publick Offices of Religion, so the antient *Britains* had the same with the *Gallic* Church. See *Comb. Hist. Lit. Part 2. 162. Still. Or. Br. 216.*

It seems very evident from the sixteenth *Answer of Ecgbriht*, Bishop of York, that the *Missal*, and other *Service-Books* of the Church of Rome, were used here from the first Times of the Nation's Conversion to Christianity. It is true, Pope Gregory, in his *Answer to Augustine's Second Question*, gives him Liberty to compose a *Liturgy* of his own, by selecting what he esteem'd best out of the *Romish, French*, or any other *Forms*; but it does not appear

that *Augustine* ever did this. And if he had, it seems probable, that *Gregory* would have recall'd this Privilege granted to him, after he himself had reform'd the *Sacramentary*. His former Indifference to the *Romish Forms*, seems to have proceeded from his Dislike to the Share his Predecessor *Gelasius* had in the drawing of them. See my Note on *Gregory's 2d Answer in my Collection and Preface to that Book, Sect. I. The Council of Cloves-hoo, A. D. 747. Ca. 10, 13, 15, 18.*

But Bishop *Still. Or. Br. p. 216.* has well observed, that there are many Things in the *Roman Offices*, and have been there a long time, which do not owe their Beginning to the *Pope*, or that Church, but were borrow'd by them from others, viz.

1. Alternate singing of *Psalms* was taken from the Church of *Milan*, and was long before used in the *East*.

2. Singing *Gloria Patri*, &c. after every *Psalms*, was the first Practice of the *Gallie Church*. At *Rome* it was used of old, but after the *Responsoria*.

3. *Te Deum* was composed, not by one of the Church of *Rome*, but by *St. Ambrose of Milan*, or *Noetius of Triers*. *Quesnel* ascribes this Hymn to *Sisebutus* the Monk. See *Quesnel's Observations on the Breviar. Mont. Cass. in Petit's Theodore's Penitential*.

4. The *Creed* was not used after the Gospel at *Rome*, till the Year 1014; but this Custom began in *Spain*, in 531.

5. Only *Epistles* and *Gospels* were antiently read at *Rome*; but in the *East* and *Gaul*, *Leſſons* out of the *Old Teſtament*.

6. In *Rome*, of old, there were no *Sermons*; but at *Milan*, and in the *Gallic Church*, every *Sunday*.

7. *Litanies* were firſt uſed in the *Greek Church*, afterward in the *Gallic*, and from thence taken by the Church of *Rome*; and this is eſpecially true of the ſhort *Litany*, or *Kyrie Eleiſon*.

And as for the *Gloria Patri* itſelf, the *Surſum corda*, the *Trifagium*, *Gloria in Excelsis*, *Prayers for the whole Eſtate of Chriſt's Church*, *Commemoration of Saints departed*, the *Words of the Inſtitution of the Sacrament*, and the like, 'tis hard to ſay where they were firſt uſed; they indeed ſeem to be *Apoſtolic* Forms, introduc'd by thoſe who firſt ſettled Churches in every Country.

By this it will appear, That our Reformers tranſcrib'd nothing into our *Liturgy*, but what was truly *Primitive*; nothing but what was borrow'd by the Church of *Rome* from other Churches, or what was uſed by that Church as well as others, while her Faith and Worſhip were uncorrupted; ſo that it may juſtly be ſaid of our *Liturgy*, that it is the moſt primitive and compleat Collection of publick Devotion that is uſed in any Church in the World.

Therefore no Clergyman ought to think the *Liturgy* too long, tho' perhaps he may not have ſtrength of Body to read all that is preſcrib'd to be read every *Sunday Morning* at one Breath, as is now commonly done, and then preach a Sermon.

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mon, as is required. If it be necessary to ease himself, he may do it by reading the three several Offices at three several times, or however at twice.

I call them three several Offices, for so they are :

1. The *Morning-Prayer* is the first, and this in King *Edw. VI's* Time, ended with the Collect for *Grace*, which is properly to be used at the *beginning of the Day*: The other Prayers have been added since, and are still directed to be omitted, when the *Litany* is used.

• 2. The *Litany* is of itself a distinct Office, and an excellent one too. *Dr. Comber* has observed, that it is almost *verbatim* the same with that used by the *Danish*, and other *Lutheran Churches*, *Part. 2. p. 307.* It is order'd to be said *after Morning Prayer*, and therefore cannot in good Sense be esteemed a part of *Morning-Prayer*. What Interval there shall be, is, I suppose, at the Discretion of the Minister. The 15th Canon seems to direct the Singing or Saying of That by itself in the Church, on *Wednesdays* and *Fridays*.

3. The *Communion Office* is so distinct from the other two, that it is still commonly called, *Second Service*; and there is no Direction at what Time of the Day it shall be used, only Custom has determin'd it to be used in the * *Forenoon*.

In

* *Mass in Times of Popery was to be celebrated on Festivals after Lauds; that is, at Nine in the Morning, or soon after; on Working-days*
it

In the Time of King Charles I. Dr. Heylin's *Hist. Sab. Part 2. cap. 4.* mentions two Services for the Morning, on Sundays and Holy-days, the one beginning at Six a Clock, the other at Nine, tho' now (says he) by reason of the sloth and backwardness of the People, in coming to the House of God, they are in most Places join'd together.

I remember, that long since the Restauration, in the Metropolitcal Church of Canterbury, Morning-Prayer was read at Six a Clock every Sunday in Summer, at Seven in the Winter, together with the Prayers for King, Royal Family, &c. as on others Days; at Ten they began the *Litany*, and, after a Voluntary, proceeded to the *Communion-Service* and *Sermon*; and so it is, or lately was, at the Cathedral of Worcester. And the Rubric does not peremptorily command the *Litany* to be used immediately after the *Collect for Grace*, or the Anthem; but only says, *The five following Collects are to be read here, except when the Litany is read.* This is only an Intimation that the *Litany* may be read here, not a positive Direction.

So

it was to begin at Noon; on Fasting-days at Three in the Afternoon; on Saturday in Ember-week in the Evening; on Easter-Eve at the beginning of the Night; and on the Feast of the Nativity before Day, and a second Mass at the usual time, viz. about Nine in the Forenoon. See Lyndw. in *Constitut. Walteri Linteamina*.

So that it appears, that the common Practice of reading all three together is an Innovation; and if an antient or infirm Clergyman do read them at two or three several times, he is more strictly conformable. A Custom hath prevail'd in Parish Churches to sing a *Psalm* in Metre, between Divine Service and Sermon; and in most Places between the *Litany* and *Communion-Service*: And this is much more agreeable than to run all the Offices into one. And there in an Act of Parliament to countenance this Practice; I mean, King *Edward VI's* Act of *Uniformity*, by which it is made lawful, *To use in Churches any Prayers or Psalms taken out of the Bible, at any due Time, not letting thereby, or omitting the Service, or any Part thereof.* However, this is much better than to omit any Part of the Liturgy, or to read all three Offices into one, as is now in many Places done, without any Pause or Distinction.

Perhaps some would rather advise to leave out the Sermon; but *such Men* (says Bishop *Still.*) *never well considered the design of our Profession, nor the way to support it, &c.* p. 204. *Eccl. Cases*, and *Or. Brit.* p. 230, &c. where he speaks admirably well of the Necessity of Preaching.

Not that a Clergyman is to shorten, or curtail Divine Offices, to make room for a long Sermon: He that does this does not *Conform to the Liturgy*, and so is false to his Promise and Subscription, and liable to the Censures of the Ordinary.

Only in the Office of Visiting the Sick, (says *B. Sprat*, in his Discourse to his Clergy) *you are*
more

more left to your own liberty. And the Great Bishop *Andrews* drew up Forms to be used by the Priest in visiting the Sick, which have been long since published. See his *Manual for the Sick*, p. 44. Edit. 1674. And Bishop *Taylor's Holy Living and Dying*, p. 234. Edit. 1674.

C H A P. IV.

Of the Places of Worship, and the Ornaments thereunto belonging; and likewise of Parishes.

AT first there was only one Church in each Diocese, viz. at the Place where the Bishop with his Clergy resided, and perform'd all Divine Offices, as at *London, Canterbury*; from whence, as Necessity required, *Priests* were sent out to Preach and Baptize in the remoter Parts of the Diocese. 'Tis probable indeed, that some other Places of Worship were built here and there, in the time of the *British* Christians; as at *Glastenbury*, or *Avalon*, where King *Arthur* was buried; at *Evesham*, and in the East Part of the City of *Canterbury*, tho' it could not be dedicated to *St. Martin*, especially if built in the Time of *K. Lucius*; for *St. Martin* did not die till *A. D. 400.* and *K. Lucius* is said to have lived in the second Century.

As all Tythes and Offerings were originally paid to the Bishop, and his Clergy residing at the Cathedral; so after other Churches were built and endow'd, yet some share of the Tythes was always reserv'd for the Bishop and his Family of Clergy:

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Clergy: Sometimes a third, sometimes a fourth Part And farther, every Freeman that occupied Land, was oblig'd, first on *Christmas-day*, by the Laws of King *Ina*, afterwards on *St. Martin's-day*, by the Laws of *Canute*, to pay a *Cýpic-ŕceat*, i. e. *Church-Scot*, to the Mother-Church, that is, most probably, to the Cathedral: Upon failure of Payment, the Bishop was, by *Canute's* Laws, to have eleven-fold Satisfaction; and by another Law of the same Prince, 40 s. 'Tis not unlikely this was the Duty which in other Countries was called *Cathedraticum*. See *Spelm. Vel. 1. p. 385, 531, 545, 563.*

In some Places they were obliged not only to pay their Contribution, or Offering for the Maintenance of the Cathedral-Church, but also to come thither in Solemn Procession, with Banner and Cross carried before them, and that on some Day in *Whitsun-Week*. Thus the Clergy and People of the Archdeaconry of *London*, with the Archdeacon or his Official, were to make their Procession to *St. Paul's* on *Whitsun-Monday*; they of *Middlesex* on *Whitsun-Tuesday*; they of *Essex* on *Whitsun-Wednesday*; and after Procession ended, to pay their Offering at the High-Altar: As appears by a Register now in Possession of the Lord Bishop of *Ely*. The Archdeaconry of *Oxford* was allowed to pay this Duty at the Abby of *Eynsham*, by reason of the too great distance of *Lincoln*, to which Diocese *Oxford* then belonged; and the Offering made on this Occasion, is expressly called, *Quadrantes Pentecostales*, alias *Smoke-Farthings*, as being due from every Housekeeper that had

Chimney, in an Instrument in a Register of the Dean and Chapter of *Lincoln*, marked E. E. fol. 99. And this Privilege to the Archdeaconry of *Oxford*, was granted by *Alexander*, Bishop of *Lincoln*, and confirm'd by the Pope's Legate, A. D. 1138. *Regist. Eynsham penes Decan. & Capitul. Æd. Christi. f. 23.* Afterwards these Oblations were compounded for, and reduced to a Certainty; and this Composition is still called *Whitsun-Farthings*.

The *Saxon* Thanes, or Noblemen, did very early begin to erect lesser Churches for their own Convenience, *Bed. l. 5. c. 4.* which yet were not to be made use of, till Consecrated by the Bishop; and it was many Ages before the Parochial Division of Dioceses was effected. We cannot precisely say when this Work first began, or when it came to a Settlement, so far is it from being true, that the Archbishop *Honorius* did this Work all at once, A. D. 636. that it does not appear, that it was then thought of.

And yet this Work was so far advanced in *K. Edward* the Confessor's Reign, that in his Laws 'tis complain'd of, that in some Places there were three or four Churches, where there had been but one; by which Means, the Maintenance of the Officiating Priest was much less'n'd; especially because *the Clergy being Rich*, while their Parishes were so large, *would not be at the Trouble of prosecuting their Rights*, which, by being neglected, were in a great measure lost. *Spelm. vol. 1. p. 621.*

Kings, Bishops, and other Lords of Manors, obliged all their Tenants to pay *Tythes*, and other Duties to the several Churches which they built

built within those Mannors, and endow'd them with House and Glebe, and so the Bounds of the Parishes and Mannors were then the same.

And if the Lord, who built the Church, had Land belonging to him at any reasonable distance, he obliged his Tenants to retain to the Church built by him, and to pay their *Tythes* to it, tho' the Land lay within the Precinct of another Parish, and in many Places they continue to do so at this Day. And if there be any Land within such Mannor or Parish, which did not hold of the Lord who built the Church, or were Parcel of some Mannor, which had no Church built in it, then it was at their own Discretion to pay their *Tythes* to what Church they pleased, if it were so near, as that they could resort thither for Divine Service. But this Inconvenience was removed by Pope *Innocent III.* about the Year 1200. Of these Matters see Bishop *Still. Eccl. Cases. Kennet of Improvements, &c.*

By the Old Civil Law, *Things Consecrated*, among which, in the first place, they reckon'd *Temples, belonged to no Man*, as a Property. *Just. Instit. L. 2. Tit. 1.* but by our Common-Law, the Freehold of the Church is in the *Parson*; and, if the *Great Tythes* be Impropriated, in the *Vicar. Watsf. c. 39. p. 304.*

If the Walls, Doors, Roof, Windows, or Pavement be broken, the Incumbent, or his Tenants, have an Action of Damage against him that did it, which the *Church-wardens* or *Parishoners* have not. *Ibid. p. 205.*

No one can give License to bury in the Church, but the Incumbent only; and yet the
Church.

Church-wardens, by Custom, may have a Fee for burying there. The Church-yard is a common Burying-place for the Parishioners, tho' the Freehold be in the Incumbent, *Ibid.* Sir *Edward Coke* is of Opinion, that any Person may erect a Tomb, Coat-Armour, or Monument in the Church, or Church-yard, in any convenient Place: But (says Sir S. D.) *I conceive it must be intended by Licence from the Bishop, or Consent of Parson and Church-wardens*, p. 146. *Watson* thinks the Parson's Leave sufficient, c. 39. Bishop *Gibson* supposes they must be set up by Leave of the Ordinary, or else may be remov'd by him, if they are in the Church, and to the hindrance of Divine Service, p. 543, 544.

The Rector, or Vicar, may not unadvisedly cut down Trees growing in the Churchyard, but only for the Repair of the Chancel or Church: for which Purposes, if the Incumbent fell them, King *Edward I.* (in that Law of his which he calls, *A Writing*, not a Statute, and which Sir *Edward Coke* calls, *A Treatise*) says, *He will praise it when it is done, tho' he will not command it.* But if any other Person cut down such Trees, the Incumbent has an Action of Trespass against him. *Watson*, p. 295.

But the Incumbent's Freehold does not annul the Right of a Peer, or Gentleman, to any Chapel, or Chancel, built or repair'd, Time out of Mind, by him and his Ancestors, for a Place of Burial, or to hear Divine Service. And it is pretended by some, that on Consideration of their maintaining their proper Chancels, they shall be excused from contributing to the Repairs

pairs of the Church ; but I find no Precedents for this. Yet in this, and almost all Ecclesiastical Cases, Custom has the Force of Law ; and if such Gentlemen have, Time out of Mind, paid no Church Sess, 'tis probable they will be excused of Right. However, they must contribute to the Ornaments, and all other necessary Charges, except Repairs.

The Vicar's Freehold does not extend to the great Chancel, the Freehold of which is in the Impropiator, except the Vicar repair it, which sometimes happens.

Churches are to be Repair'd by the Church-wardens, at the Charge of all the Inhabitants, or such as occupy Houses or Lands within the said Parish, by the particular Custom of *England* ; and the Ecclesiastical Judge may excommunicate the Church-Wardens and Parishioners for Neglect, *Watf. c. 39. p. 302.* The second Article of the Statute *Circumspecte agatis*, made *A. D. 1285.* in the Reign of *Edward I.* is, that a *Prelate shall not be prohibited, if he enjoin Penance for a Church not being Built, Repair'd, or Adorn'd* ; and adds, *That in this Case, no Penance can be inflicted, but pecuniary* : And it appears by a Constitution of Archbishop *Stratford, Quamvis, A. D. 1342,* that Ordinaries did frequently inflict such Penance, or lay such Fines, which that Constitution orders to be apply'd to the Building or Repairing the Church.

Sir *S. Degg* proves, by good Reasons and Authorities, that Outdwellers are chargeable for their Land, towards Ornaments, as well as Repairs of the Church, *Parf. Counsellor, p. 138* ; and so it was provided by the Constitution of

Strat.

Stratford, Archbishop of Canterbury, *Licet Parochiani*; yet there are Precedents to the contrary. And the Majority of the Parishioners may make a Tax for the Enlarging or Rebuilding it, in case it fall down. *Ibid.* But in these, as well as all other Meetings and Vestries, Outdwellers, occupying Land in the Parish, have a Vote as well as Inhabitants. See *Parish Couns. ubi supra.*

The Churchyard is likewise to be Fenced at the Charge of the Parish, except there be a special Custom to the contrary.

And in London, by very antient Custom, before *Lyndwood's* Time, the Parishioners have, and do Repair the Chancel. *L. 1. T. 10. c. Archidia. v. Reparatione.*

When two Churches or Chapels are united, by 17th of *Charles II.* and one of them is Demolish'd, the Parishioners of the Demolish'd Church shall equally contribute to the Repairs of the standing Church.

Necessary Ornaments of a Parish-Church, are, besides Books,

A Font of Stone with a Cover, the Font must be large enough to dip a Child in. See *Rubr. in Bapt. & Can. LXXXI.* Quere, Whether there ought not to be in Parochial Churches, Fonts large enough for dipping grown Persons? Since 'tis evident, that any such may require the Minister to dip him, if he have not been Baptized in his Infancy. See *Rubr. in Office of Bapt. for those of riper Years.*

A Communion-Table, with a Carpet of Silk or decent Stuff, and a fair Linen Cloth, with a Patin, Chalice, and Flagon of Pewter, if not of pure

purser Metal, *Can. XX. LXXXII.* By the Constitution of Archbishop *Wethershed*, 'tis forbid to consecrate the Eucharist in any Chalice but what is made of Gold or Silver.

A Basin to receive the Oblations of the People. *Rub. before the Offertory.*

There must likewise be in every Parish Church and Chapel, a Surplice, which the Minister is obliged to use, *in saying Mattins, Evensong, Baptizing, Burying in Churches, and Parochial Chapels; the Minister in other places shall have liberty to use any Surplice or no, by a Rubric at the End of Edward VI. Common-Prayer-Book, authoriz'd in the second Year of his Reign, and enforc'd by the Rubric immediately before Morning-Prayer, in our present Liturgy. In the said Liturgy, published in the second Year of Edw. VI. we have this following Rubric before the Communion-Office, At the time appointed for the Ministration of the Holy Communion, the Priest that shall execute the Holy Ministry, shall put upon him the Vesture appointed for that Ministration; that is to say, a white Alb plain, with a Vestment or Cope: And so many Priests or Deacons as help the Priest, shall have upon them the Vestures appointed for their Ministry; that is to say, Albs with Tunicles.* I find that others, as well as I, have supposed, that all the Ornaments enjoin'd to Ministers by the first *Common-Prayer-Book* publish'd in the second Year of *Edw. VI.* and consequently by our present Liturgy, were the *Surplice* for the *Priest*, the *Rocket*, *Alb*, and *Cope* for the *Bishop*. The occasion of this Mistake was, that we look'd no farther than to
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that long *Rubric* at the End of that Book; but by a more diligent perusal of the *Communion-Office*, it appears that the *Cope* is enjoin'd to the celebrating Priest, *Albs* and *Tunics* to the attending Clergymen. And the Reader may observe, that in the *Rubric* which enjoins the *Surplice*, there is no mention made of its being to be used at the Communion; the reason of which was, that another Habit had been before prescribed for that Office. The *Alb* differs from the *Surplice* in being close-sleev'd. In the second Book of *Edw. VI.* the Bishop was oblig'd to use a *Rock* only, at all times of his Ministration, and the Priest or Deacon a *Surplice* only, the *Alb* and *Cope* are expressly forbid. In the first Book of *Q. Elizabeth*, and so till 1661. there was a *Rubric* enjoining all Ornaments that were in use by Authority of Parliaments, in the 2d Year of *Edward VI.* But this *Rubic*, as Bishop *Gibson* observes, was not inserted by Authority of Parliament, and indeed it was not always in the same Words, tho' to the same effect. By the Act of *Uniformity*, made in the first Year of her Reign, the same Ornaments of Church and Minister that were used by the first Book of *Edward VI.* were enjoined, but the Queen had Power to take other Order therein, by the Advice of her Ecclesiastical Commissioners, or of the Metropolitan of this Realm. Some have attempted to prove, that she did take such Order; but there is no certain proof of it; nay, it is evident enough that she did take no such Order: For the *Rubric* enjoining the same Ornaments that were used in the first Book of *Edward*, still continued thro' her Reign, and the

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two following : And if she had taken such Order, yet the *Rubric* before *Morning-Prayer* in our present Liturgy, enforced by the Act of Uniformity, 14 Charles II. could not be affected by any Order taken by Queen Elizabeth: therefore Bp. Gibson, truly says, *Leg. Ap. the Ornaments of Ministers in performing Divine Service are the same now, as they were in the 2d of Edw. VI. Code p. 363.* yet he marks this *Rubric* of Edw. VI. as obsolete, p. 472. He does not so mark the *Rubric* in our present Liturgy, p. 363. and yet it is certain they are both in force, or neither of them are so. It is much to be wish'd, that this *Rubric* were alter'd by proper Authority.

Less necessary Ornaments are, Bells, Pulpit Cloath and Cushion, Hoods, Organs, Conveniences for kneeling at Prayer and Sacrament, &c. If by the Agreement of the majority of the Parishioners a fifth Bell be made, where there were four before, and a Sess agreed to by the Majority for the Payment of the same, it shall bind the lesser part of the Parishioners, tho' they did not agree to it, *Godol. C. XII. L. 30.* By parity of Reason, any of these less necessary Ornaments may be had, if the Majority of the Parish met in Vestry, consent.

I place the *Hood* among the less necessary Ornaments: For tho' it be positively prescrib'd by Canon LVIII. yet the Temporal Courts will scarce allow that a Canon can create or impose any new Charge on a Parish; and the *Rubric*, which is enforced by Statute, does not expressly enjoin it; but only says, it is *seemly that Graduates, when they Preach, shou'd use such a Hood as pertaineth to their Degree.* Dis.

Disputes sometimes arise between Clergymen and Churchwardens, concerning old *Surplices, Books, &c.* to whom they belong. 'Tis certain the Property of them, while in use, was in the Churchwardens; yet not for their own use, but for the use of the Curate and Parishioners. I think the antient Custom ought to be observed; that is, that they should be burn'd. See *Provinc. L. 1. T. 6. Panni.* not only because having been put to a Holy Use, they ought not to be profan'd; but because this puts an end to all Disputes about Things of little or no Value.

And here it is to be observ'd, that Parochial Chapels differ only in Title from Parochial Churches, they being so called, either because they, and the Parishes belonging to them, are very small, or because they have, Time out of Mind, been annex'd or united to other Churches, and so, for distinction sake, have the Name of *Chapels.*

And the same may be said of *Free Chapels, viz.* such as have been erected by Kings, for the convenience of their Families, near their Palaces, or Places of Retirement, and which have now Districts or Parishes belonging to them. These last are commonly exempted from the Jurisdiction of the Bishop.

Chapels of Ease, are such as are built in the remote Parts of large Parishes, for the convenience of the Parishioners; who yet were of old obliged to resort to the *Mother-Church,* to receive *Sacraments* and *Sacramentals:* Which Chapels, if they are not particularly Endow'd by their Founders, are served at the Charge of the People who retain to them, or of the Incumbent

bent of the *Mother-Church*, according as Custom has been ; and the Inhabitants resorting to them, shall both repair their Chapel, and equally, with the other Inhabitants, contribute to the Repair of the *Mother-Church*, without a special Prescription to the contrary. *Go. C. XII. Sr. 28. 33.*

Domestick Chapels, are such as are built by Noblemen or Great Persons, for the Devotion of themselves and Families ; neither these, nor any Chapels, except those which had Parishes belonging to them, were Consecrated, nor might the *Mass*, in Times of *Popery*, be celebrated in them, without special License ; and therefore it is said by *Lyndwood*, that they might be built without the Bishop's Leave. See *Lynd. in gloss. L. 3. T. 23. Quam sit*, &c. And, I suppose, 'tis for this reason, that the Common Law says, that they do not belong to the Ordinary's Jurisdiction. *Watf. c. 23. p. 112.* See *Const. Otho. Basilic. gloss.*

The Reason I have to say that these Private Chapels were not Consecrated, is, that the Constitution of *Stratford*, Archbishop, abovesaid, beginning, *Quam sit*, expressly forbids, 'Celebrating the Mass in unconsecrated Places, excepting the Places of this sort (Oratories and Chapels, says *Lyndwood*) belonging to Noblemen, who live at a distance from the Church, or are infirm, to whom a License is allow'd ; and excepting the Oratories of the dignify'd Clergy, built long since, and Chapels Royal.' Every one of these Exceptions had been needless, if these Oratories or Chapels had commonly been Consecrated. *Lyndwood*, in his Gloss on
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the Word *Chapels*, will scarce allow, that that which is Consecrated, should be called by that Name; but puts it off in this manner: 'Some-times 'tis called a *Chapel*, though it be dedicated, to distinguish it from a greater Church. *Gloss. ib.*

But I suppose the Chapels of all Religious Houses are to be excepted: And likewise now, with us, Chapels belonging to Colleges, &c.

Chapels belonging to Colleges in the University, and other such like Corporations, who receive the Sacraments apart from the Parish-Church, are for the most part Consecrated, and yet not liable to be visited by the Bishop.

And here I cannot but say, that the Prudence of the Bishops of this Age is much to be commended, who have and do, as I am credibly inform'd, refuse to consecrate any Chapel, except some Endowment for one, or more, officiating Clergyman be settled and secured to it. For it appears by Experience, that where this has not been done, Chapels have, within an Age or two, been desecrated, and turn'd to common use.

To Brawl, or Quarrel in the Church or Church-yard, is punishable by the Ordinary. See *Eccl. Censures*. To Smite, or lay violent hands on any Person, is Excommunication, ipso facto; to draw any Weapon, with intention to strike any Person, is punishable in the Temporal Courts, by having one Ear cut off; or if the Party have lost his Ears, by being branded with an F on the Cheek. See Stat. 5, 6. Edw. 6. c. 4.

To disturb a Preacher in any Church, or Church-Yard, is a Crime punishable by the Justices, who, by 1 Mar. 2 Sess. c. 3. are to Im-

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prison such a Person without Bail, till he Repent.

And, by *Stat. 1 W. M. c. 18.* 'tis 20*l.* Penalty to disturb a Preacher; but this last Act extends to them who preach in Conventicles, as well as those who preach in Churches.

If the Goods of the Church be stolen, it is Sacrilege and Robbery; and if a Person do in the Night break the Church and enter, he is guilty of Burglary. *Watf. cap. 39. p. 303.*

'Tis unlawful, by *Can. 76, 87.* to keep Fairs or Markets in Churches, or Church-Yards; and so it was declared many Ages since, by the *Stat. of Edw. I. 13. at Winton.*

In times of Popery, Churches were Sanctuaries for all manner of Malefactors. This Privilege was taken away for Felony, Murder, and all gross Crimes, by *Stat. 26, 27. H. VIII;* but as for lesser Crimes, not till 21 of *K. James I.*

Every Bishop in the Church of *England* is now left to his own Discretion, as to the Form of Consecrating Churches and Chapels: There was a Form drawn up in the Convocation, *A. D. 1661.* and again in the Reign of *Queen Anne,* but it was not authoriz'd or publish'd; and in case a Consecrated Church be polluted by Murder, Adultery, Fornication, or the like; the Form of Reconciliation (as the *Canonists* stile it) is likewise at the Bishop's Discretion.

C H A P. V.

Of the King's Supremacy.

TH E R E is no Doctrine of the Church, no Right of the Crown so guarded with Articles, Canons and Statutes, as *The King's Supremacy in all Causes, and over all Persons, as well Ecclesiastical as Civil.* See *Artic. 37. Can. 1, 2. Stat. 25 Hen. VIII. c. 19, 20, 21. 1 Eliz. 1, &c.* Queen *Elizabeth*, in her *Injunctions, 1559*, explains the Meaning of this *Supremacy or Headship*; that is, *under God to have the Sovereignty and Rule of all Persons Born within her Realms and Dominions, of what Estate (either Ecclesiastical or Temporal) soever they be; so as no other Foreign Power shall, or ought to have any Superiority over them.* This *Supremacy* chiefly consists in these following Particulars, *viz.*

1. In that the Archbishops of either Province cannot summon their Bishops and Clergy to Convocation, nor enact any Canons without the King's express Consent; by *Stat. 25 Hen. VIII. c. 19.* Whereas, before the making that Act, the Convocation was often call'd, and Laws were by it made, for the Governing of the Church, without any Authority from the Crown.

The Court of Delegates.

2. In that there lies an Appeal from the Archbishop, to the King, in *Chancery*; and upon such Appeal a Commission under the Great Seal is to be directed to certain Persons, whereof commonly half are of the *Clergy*, half of the *Laity*, which is called the *Court of Delegates*, and which finally determines all *Ecclesiastical Causes*, by *Stat. 25 Hen. VIII. c. 19.* Sometimes a Review is granted. Whereas, before that Statute, the Appeal from the Archbishop's Court lay to the Pope only.

3. The King can grant Commission for Visiting such Places as are exempt from the Jurisdiction of the Bishops and Archbishops; and an Appeal lies from Courts in such Places, to the King, in *Chancery*; whereas, before this Act, the Pope only could Visit them, and receive Appeals from these Courts.

4. They that are in Holy Orders now, and ever since the Statute 28 *H. 8. c. 1.* are no more exempt from the King's Temporal Laws, than the Laity: Whereas in antient Times, a Clergyman, tho' convict of Murder, Felony, &c. could not be sentenced or executed by the Temporal Judges or Officers; but was delivered to his Ordinary, and by him committed to Prison, and after some time admitted to a Compurgation; by which means he was generally acquitted: But if the Crime were very notorious, or the Criminal very scandalous indeed, he was kept in the Prison of the Bishop, or of some Monastery, where, it was pretended, he did Penance,
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in Bread, and Pulse, and Water, during the remainder of his Life. In after-times, if the Clerk, convict in a Temporal Court, could not purge himself of the Crime to his Ordinary, he was degraded, and then, as a Layman delivered over to suffer the Law by the Secular Power. Afterwards, a Layman that could read, was in some Cases allow'd the same Benefit, as if he had been in Holy Orders. This Privilege which was one of those for which *Becket* lost his Life, was lessen'd very much in *Hen. VII's* Time, and in *Hen. VIII's* in effect taken away.

5. Now the Bishops and Clergy neither swear, nor pay any Obedience to the Pope: Whereas till the Reign of *Hen. VIII.* all Bishops, Abbots, &c. took an Oath of Obedience to the Pope; and all the Clergy, both Regular and Secular, to them. And it was a prevailing Doctrine, That if the Commands of the Pope and the Prince were contradictory, *they ought to obey the Pope rather than the Prince*: But now, both Prelates, and other Clergymen are entirely the King's Subjects, and so (I dare say) they desire to continue.

Farther, The King has several Prerogatives in Church-Matters, *viz.*

1. His Majesty is Patron of all the Bishopricks and Deanries, and of most of the great Prebends; but the † Earl of *Derby* is Patron of the

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† *The Earl of Derby nominates the Bishop of Man; but the Archbishop of York does not Consecrate him, till the Broad-Seal for the King's Consent be produced.*

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the Bishoprick of the Isle of *Man*; and the Deanery of *St. Asaph* is in the Gift of the Bishop.

2. The King, by his Prerogative, has a Right to the Revenues of all vacant Bishopricks; and farther, Presents to all Dignities and Benefices that are in the Gift of those Sees, that become vacant, between the Death of the former Bishop, and the Consecration of the next; and likewise, to all that were vacant before the Death of the former Bishop, and not filled by the Induction of a Clerk before the said Bishop's Death. See *Watf. c. 9. p. 48.* Institution in this Case is not sufficient.

3. No Dispensation granted by the Archbishop of *Canterbury* shall be of Force without Royal Confirmation under the Broad-Seal, unless it be a Dispensation for which less than 4*l.* was to be paid by the Pope's Tax. *Stat. 25 H. VIII. c. 20.*

4. The First-fruits, and Tenths of all Ecclesiastical Preferments were, by *Stat. 26 H. VIII. c. 3.* and other Statutes, settled on the Crown; but Her late Majesty Queen *ANNE* of Blessed Memory, by Virtue of an Act of Parliament, settled them on a Corporation of the most Reverend and Honourable Persons in the Nation, for an Augmentation of the Maintenance of the poorer Clergy. See *Ap. Numb. 1.*

5. The King may qualify as many Chaplains as he pleases, and give them as many Livings of his own Gift, as he thinks fit, and Dispense with their Residence. *Stat. 21 Hen. VIII. c. 13.*

6. The King may recal his Presentation any time before the Clerk be Inducted, whereas the Church is fill'd against any other Patron, or Person, by Institution. *Watf. c. 20. p. 150.*

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7. The King presents to all Preferments that are vacant, by reason of any corrupt or simoniacal Bargain, or Contract; by *Stat. 31 Eliz. c. 6.*

8. If the Incumbent of any Dignity or Benefice be promoted to a Bishoprick, the King presents to all the Preferment, which the Bishop had at the time of his Promotion: but if the Bishop be permitted to hold any such Preferment, by Dispensation, with his Bishoprick, and do afterwards resign, or otherwise vacate them, the next Presentation comes to the Legal Patron. *Watf. p. 49, 50.*

9. If the lawful Patron, Bishop, and Archbishop neglect to present, or collate to a vacant Church the several six Months which the Law allows to every one of them, then the Benefice lapses to the Crown, and the King shall present for that Turn; and He may take His own time to present. *Watf. c. 12. p. 71.* But here it is to be observed, that the King does not bestow Personally any Preferment under the Yearly Value of 20*l.* in his own Books. *Watf. c. 13. p. 98* says, 'twas formerly 20 Marks. The Lord Chancellor, or Keeper, presents in the King's Name to all * Preferments under that Value,

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and

* *This Privilege is said to have been given to the L. Chancellor, upon Consideration that he had many Clergymen constantly officiating under him, as those Laymen now do, who are still called Clerks of Chancery, and who were not permitted to marry, till a Statute was made on purpose to enable them, in the Reign of Hen. VIII. Now, that the L. Chancellor might be capable to gratify these Clerks, he had the Privilege of bestowing these Benefices given him by the Crown.*

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and this, whether the Right be Original, or only by Lapse: and if the Keeper do give a Presentation under the Broad-Seal, for one of the Benefices in the King's immediate Gift, yet if the Clerk get Induction by Virtue of that Presentation, it seems it shall be good; except the King do repeal such Presentation of the Chancellor (of which Presentation he need give no Notice to the Bishop) before such Induction. See *Watf. c. 10. p. 155, 156.*

10. No Benefice can Lapse from the King to the Ordinary, or other Person.

C H A P. VI.

Of Archbishops and Bishops.

THIS Church, as all others, was from the beginning of Christianity govern'd by *Bishops*. We meet with three of them, in the List of *Bishops*, and others prefix'd to the Synod of *Arles*, *A. D. 314.* (if that List be genuine) and there were three others at the Council of *Ariminum*, *A. D. 359.* *Fastidius*, a *British* Bishop, had a Book (still extant) *De vita Christiana*, he flourish'd in 420. *Bede* mentions no less than seven *British* Bishops meeting *Austin* at the second Interview, *L. 2. c. 2.* who all stily opposed the Pope's Usurpation.

A brief

A brief Account of the whole Process, which is by Law used in creating a Bishop, here follows.

Upon the Vacancy of a See, the Dean and Chapter are to certify the King thereof in *Chancery*, and to request his Leave to chuse another Bishop. The King, at his Pleasure, sends his *Conge de eslire* (*i. e.* leave to Elect) to the Dean and Chapter, nominating the Person whom he thinks fit to be chosen. The Dean and Chapter are obliged, within 20 Days next after the receipt of this License, to make the Election, which, being accepted by the Party elected, is certified both to the King and Archbishop of the Province. The King hereupon grants his Royal Assent under the Broad-Seal, directed to the Archbishop, together with a Mandate to confirm and consecrate him. The Archbishop gives a Commission to his Vicar-General to proceed to Confirmation, which is a long and formal Process; but the most observable Parts of it are, a Citation of all such as have any Objections against the Bishop Elect, to appear and offer them; and a deduction of all that has past in relation to the Election, and the Royal Assent; the Particulars whereof are exhibited by the Proctor of the Dean and Chapter to the Vicar-General; after which, the Oaths of Supremacy, Simony, and Canonical Obedience, are taken by the Bishop Elect; upon which Sentence is read, and subscribed by the Vicar-General, whereby the Election is ratify'd, and decreed to be good. Next follows the Consecration, performed by the Arch-

Archbishop and two other Bishops at least, or by four other Bishops; then the Archbishop sends a *Mandate* to his own Archdeacon to introduce the Bishop in that Cathedral Church which belongs to his See, which is ofteneft done by Proxy. And the publick Notary, there present, records the whole Process in an Authentick Instrument, to be kept to Posterity. After which the new Bishop is introduced to the King to do Homage.

Between the Election, and Consecration, the intended Bishop's Title is, *The Lord Elect of...* See *Stat. 25 Hen. VIII. 20.* upon his Consecration he has a Right to the Temporalities, but cannot Sue for them till his Consecration be certified by the Archbishop; but the King may grant the Bishop his Temporalities immediately after Confirmation. By his Confirmation he is instated in the Jurisdiction of his Diocese, so as to excommunicate, and certify it; and therefore the Power of the Guardians of the Spiritualities ceases, from that Time forward. *Godolp. c. 2: sec. 6, 9.*

Upon the Translation of a Bishop to another See, the same Forms are repeated, only the Consecration omitted; but the Election is confirmed by the Archbishop, and two other Bishops. And when an Archbishop is to be created, the Royal Commission is sent to the other Archbishop, and two Bishops, or else to four Bishops. See *25 H. VIII. c. 20.*

And here it is to be observ'd, that the Bishop's Jurisdiction is confin'd to a Place, *viz.* his own Diocese, and therefore he cannot excommunicate those of another Diocese, nor institute a Clerk in-

to a Benefice that lies within the Bounds of another Bishoprick, (tho' it is not necessary that the Bishop be within his own Diocese when he institutes, but that the Benefice to which he institutes be so.) *Watf. c. 15. p. 109.* But as to his Power of Orders, that is universal, insomuch that *Irish* Bishops Ordain in *England*; nay, we are told, that the Bishop of *Spalato*, while he was amongst us, conferr'd *Holy Orders*; and the validity of Orders so given is not disputed; but regularly, Leave ought to be ask'd of the Bishop, within whose Diocese Ordination is perform'd; and by the Constitution of *Edmund*, Archbishop of *Canterbury*, Clerks thus irregularly Ordain'd, are suspended, till they purchase a Dispensation. See *Lynd. L. 1. Tit. 4.*

ARCHBISHOPS.

As Bp. *Beveridge* hath learnedly proved, that Metropolitans, or Archbishops are as antient as the Apostolical Times, tho' they were not for some Ages called by either of these Names, or Titles, but only * *Primi Episcopi*; so the old *British* Christians are believed to have had at least one Archiepiscopal See amongst them, before the Times of *Austin* the Monk, viz. at *Caerleon*, or *Llandaff*, as some would have it. See *Still. Or. Br. p. 202.*

Bp. *Stillingfleet* labours to prove, that *London* was an Archbishop's See before the Invasion of the *Saxons*; but Bp. *Beveridge* truly says, that this is wholly uncertain. Pope *Gregory's* Letter to

* See *Bev. on the Apost. Can. de Metropol.*

to *Austin*, *Bed. L. i. c. 29.* orders his Metropolitcal See to be at *London*: but perhaps that Letter is not genuine, at least King *Alfred* did not think it so; for he has not translated it; or if the *Pope* did so intend it, he was over-ruled by King *Ethelbert*. For it is certain that *Austin* fix'd his Archiepiscopal Chair at *Canterbury*, which was then the Capital of *Ethelbert's* Kingdom, whose Dominion reach'd from *Kent* to the River *Humber*: and ever since that Time *Canterbury* has been an Archbishop's See. 'Tis true, King *Offa* erected another at *Litchfield*, in the Time of Archbishop *Lambert*, 786. and laid the greatest half of the Province to it; but this was of scarce Ten Years duration.

The Archbishop of Canterbury.

Dr. *William Wake*, the present Archbishop, is the 81st from St. *Augustin*, taking in *Elfin*, *Reginald*, and *John Ufford*, (who did not live to be Consecrated) but not *Roger Walden*, who yet acted as Archbishop, during *Arundel's* Exile. The present Archbishop was translated from *Lincoln*, &c.

The Privileges belonging to this See are;

1. To call the Bishops and Clergy to Convocation, which before the *Stat. 25 H. VIII.* the Archbishop did without a Royal License, or Mandate: but since that Act, he is not to do it under pain of *Præmunire*, without leave from the Crown, which is legally and of course granted, so often as a new Parliament is call'd, and to him the Elections are return'd.

2. He is president of the Convocation, when met, and he Prorogues and Dissolves it at the direction of the King.

3. He has Power of visiting, and censuring all other Bishops within his Province. 'Tis lately disputed, whether he can proceed to the Sentence of Deprivation, or not; but yet we have seen such a Sentence take effect; however, in such Cases the Archbishop takes other of his Comprovincial Bishops as Coassessors with him.

4. Upon occasion he appoints † Coadjutors to other Bishops, if they grow infirm, or disabled. See Archbishop *Sheldon's* Letter to the Bishop of *Ghezna*, 1676. And, during the Vacancy of any See within his Province, he commits the Ecclesiastical Jurisdiction to what Persons he thinks fit: But the Dean and Chapter of *Canterbury* are Guardians of the Spirituality for the whole Diocese, and Province, during the Vacancy of that Archbishoprick.

5. To him, in his Court of Arches, lie Appeals from the Courts of all other Bishops, and Archdeacons within his Province.

6. He hath the Probate of all Wills, and granting Letters of Administration, where the Party deceased had 5*l.* in Money or Value, out of the Diocese wherein he died, or in two distinct exempt Jurisdictions; or 10*l.* within the Diocese of *London*; or if the deceased were a Bishop. If the Party deceased have Goods or Debts in
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† Coadjutors were *Priests*, to whom the *Episcopal Jurisdiction* was committed: while *Matters of Order* were performed by a *Suffragan Bishop*. Dr. G's Code, p. 158.

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two Provinces, Probate must be made, or Administration granted in both Archbishops Courts.

7. He has exempt Churches in several Dioceses, and even in the Province of *York*, visitable by no other Bishop but himself; and generally Churches that were originally of his Patronage, are still under the Jurisdiction of him, and his Commissary, or Dean of the Arches, only. His other Advowsons came to him by the Dissolution of Monasteries.

8. He has the Choice, or Option of any one Dignity, or Benefice, in the Gift of every Bishop consecrated or confirmed by him, which he may confer on his Chaplain, or whom else he pleases. Or in case he dies before it fall vacant, the Option is at the disposal of the Executor, not the Successor. Of old the Bishop, on his being confirmed, obliged himself to provide Preferment for two of the Archbishop's Chaplains: By what Steps this was alter'd and settled upon the foot on which it now stands, see in Mr. *Nelson's* Life of Bishop *Bull*, p. 356.

9. He has Power of dispensing, in any Case wherein Dispensations were formerly granted; so that it be not contrary to God's Word; and may grant such Dispensations to the King and Queen: but if the Case be New, the King and Council are to be consulted. *Stat. 25 H. VIII. c. 20.*

10. He dispenses with young Students in Divinity, to enter into Deacon's Orders before they be full 23 Years of Age, and with Clergymen to hold more Benefices than one; but the Dispensations last mention'd are to be ratified by

by the King, in Chancery, at least if the first Benefice be above 8*l.* *per Annum*.

II. 'Tis to be observ'd, that he grants these Dispensations not only within his own Province, but also in the other of *York*: So that in this respect he is justly stiled, *Primate of ALL ENGLAND*.

At a great Council of the Kingdom, held in the Reign of *W. I.* it was determin'd, that the Archbishop of *York* should attend the Archbishop of *Canterbury's* Summons, when he called him to Council. *Ang. Sac. p. 615.* And 'tis allow'd that Archbishop *Corboyl*, who came to the See of *Canterbury*, *A. D. 1122*, did exercise this Authority; and another of them, *viz. Hubert Walter*, did visit the Province of *York*. But tis said, that these two Primates did in these particular Facts proceed not by their Metropolitcal, but their Legatine Authority. For *Corboyl*, and all his Successors, had the Style and Power of *Legati Nati* conferr'd on them by the *Pope*, till Archbishop *Cranmer* renounced it openly in Parliament, *A. D. 1535*. And I think it is the current Opinion, that the Archbishop of *York* is, and has been for many Ages Independent on *Canterbury*; and this Dispute is at an End: For National Synods have now for 150 Years been wholly disused; so that this Privilege, if ever it were one, is vanish'd. But this is certain, that the Archbishop of *Canterbury* has been always taken to have more ample Privilege and Jurisdiction, than that of a meer Metropolitan, and has in former Ages been stiled a Patriarch by some: For some time *Ireland* belong'd to his Province; for there was no Archbishop there till *A. D. 1142*.

Farther,

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Farther, this Archbishop enjoys several great Temporal Honours, *viz.*

1. He is the first Peer of *England*, and takes place of all that are not of the Royal Family.
2. He does, of antient Custom, Crown the King or Queen.
3. He is always one of the Lords of the Privy-Council.

The Archbishop of York.

The Archbishop of *York* has the antient Rights and Authority of a Metropolitan within his Province, which formerly took in all *Scotland*; for there was no Archbishoprick in *Scotland* till the Year 1466. He enjoys the Six first mentioned Privileges of the See of *Canterbury*; as to the 7th, *Quere*. He likewise has his Option, upon the Consecration of any Bishop in his See, says *Watson*, p. 51. Both the Archbishop of *Canterbury*, and he of *York*, from the Time of *Austin* and *Paulinus*, down to the Reign of *Hen. VIII.* (saving that Eight of this Province had it not, *viz.* those between *Paulinus* and *Egbert*) received a *Pall* from *Rome*, for which they paid an unreasonable Sum. This *Pall* was a supernumeral Robe made of Lambs-Wool, curiously adorn'd, and worn by the Archbishop when he celebrated Mass: It is still the Arms or Device of the Archbishoprick of *Canterbury*. 'Twas pretended to be an Ensign of Archiepiscopal Authority, but was in reality a Badge of Slavery to the See of *Rome*.

The Archbishop of *York* takes place of all the Peers, except his Elder Brother of *Canterbury*,
and

and the Lord Chancellor, and does usually crown the Queen-Consort. And tho' he cannot grant such Licenses and Dispensations as the Archbishop of *Canterbury*, not even to those of his own Province and Diocese; yet he may dispense with beneficed Clergyman for not residing on their Benefices, for some limited Time, and for marrying in Hours and Places not otherwise allow'd by the Canon; which likewise all other Bishops may do in their several Dioceses; for they are all allow'd to have Power of Dispensing in such Cases as they formerly used to do, Stat. 25 Hen. VIII. c. 21. And 'tis, I suppose, allow'd by all Canonists, that every Bishop has the Power of dispensing with any Canon, except it be in such Cases as are reserv'd to the Archbishop, as Pluralities, &c. But the Bishop of *Norwich* has this particular Privilege by Immemorial Custom, and therefore, I suppose, confirmed to him by the Clause just now mention'd in Stat. 25 H. 8. that he can dispense with the Clergy of his own Diocese to hold more Benefices than one; and if we may believe *Lyndwood*, every Bishop might, of old, dispense with a Clergyman for Plurality of Benefices; but in his Time 'twas otherwise, the Pope having reserv'd this Power to himself. L. 3. T. 5. c. 2. *Ver. Dispensatione.*

By Stat. 43 El. 4. it is provided, that the L. Chancellor may award Commission to the Bishop and his Chancellor, and other Persons, authorizing them, or any Four of them, to regulate Abuses of any Gifts, or Grants of Lands, or Goods within his Diocese, for charitable Uses. And the Orders and Decrees made by them, shall stand firm, till alter'd by the Chancellor; and it is by the

the same Law acknowledged, that the Ordinary had power to regulate what was given for charitable Uses, before the making of this Act, and that nothing contain'd in this Act shall be prejudicial to this Power.

As the Archbishops, so every Bishop has two several sorts of Power; the first, that which cannot be delegated to any that is not a Bishop, viz. to Ordain; to Confirm Persons that have been Baptized; to Depose or Degrade Clergymen: to Consecrate Churches, &c. The other sort of Power, that every Bishop, as well as Archbishop, has within his own Diocese, is, that which is now commonly delegated to Doctors of Law, or other Laymen; which is to prove Wills, to license * School-Masters, Physicians, Chirurgeons,

* *Bishops by the Canon Law, and even by the Common Law of the Nation, have ever had the sole Power of Licensing School-Masters. By Stat. 23 Eliz. c. 3. They who keep a School-Master without License, or who absents himself from Church, forfeit 10 l. per Month; and the Schoolmaster suffers a Years Imprisonment, without Bail, and is for ever disabled to teach. Both the unlicensed Schoolmaster, and he that retains him, (tho but in a Family) forfeit 40 s. per diem each, by Stat. 1 Jacob. I. c. 4. The Act of Uniformity made in the 14th Year of Charles II. obliges the Schoolmaster before he be licens'd, to promise Conformity to the Liturgy, and if he refuse, his Place is made void by that Act. To teach without License was forbid by the same Statute, under the Penalty of three Months Imprisonment, for the first Offence;*

ons, &c. See Stat. 3 Hen. VIII. c. 11. to hear Causes of Matrimony, Tythes, Defamation, and whatever other Matters are of Ecclesiastical Cognizance; to hold Visitations, and decree
Ex.

Offence; and three Months Imprisonment, and the forfeit of 5*l.* for the second, and every following Offence. Many Schismatical Schoolmasters were prosecuted on this Statute in the Ecclesiastical Courts, but the Judges were not willing to determine how far the Act of Toleration (as 'tis called) affected the Act of Uniformity, and so not only Schools, but Academies were publickly kept by notorious Nonconformists, till that wholesome Law was made by the most Memorable Parliament in the last Year of Q. Anne's Reign, entitled, An Act to prevent the Growth of Schism, &c. By this Statute a Penalty of three Months Imprisonment is laid on him that teaches School without License, and without promising Conformity. Further, in order to obtain a License, the Schoolmaster must bring to the Ordinary a Certificate of his having received the Sacrament within one Year next before, under the Hand of the Minister and one Churchwarden of the Parish Church wherein he received it; and he must also take and subscribe the Oaths of Allegiance and Supremacy, and take the Test before the Ordinary, who grants the License. If after being thus Licensed, and while he teaches School, he go to any Meeting for the exercise of Religion, where the Common-Prayer is not used (and particularly the Prayer for the Royal Family, in the words appointed by Authority) he is from thenceforth disabled

Excommunications, which are to be denounc'd by the Curate of the Parish where the Party Excommunicate dwells.

All

disabled from teaching School. And he who teaches any Catechism, but the Church Catechism, voids his License. The Offender may be prosecuted by the Ecclesiastical Law, but not punish'd twice for the same Offence. Tutors in Universities are not affected by this Act. Tutors kept by Noblemen in their Families, are not to take License; but in all other respects to qualify themselves as other Schoolmasters. Foreigners of the Reformed Religion, allow'd by the Queen or her Heirs, are exempted from the Penalties of this Act. He who is convicted for going to a Meeting, after being licensed, and so is disabled from Teaching, may render himself capable again by conforming to the Church of England, and forbearing other Meetings for one Year, and receiving the Sacrament thrice in that Year: but then he must renew his License, Subscriptions, &c. and further, he must take Oath in Writing, at some Court at Westminster, or at Quarter-Sessions in the place where he resides, the next Term, or the next Quarter-Sessions after he takes upon him to teach School, that he hath conformed to the Church of England for one Year last past, without being present at any Conventicle; and that he hath thrice received the Sacrament within that Year. This Act extends not to such as instruct Youth in Reading, Writing, Arithmetic, or Mathematical Learning, so far as such Mathematical Learning relates to Navigation,

All Bishops are Peers of the Realm, and Lords of Parliament (except the Bishop of *Man*) and have Precedence of all Temporal Barons, and the Bishops of *London*, *Winchester* and *Durham*, before the others; the rest take place according to that Order or Series in which they were Consecrated. The Bishop of *London* is said to be Dean, the Bishop of *Winchester* Chancellor, the Bishop of *Sarum* Precentor of the Provincial College. *Lyndwood* gives this as a Reason, why the old Service, *ad usum Sarum*, prevail'd in this Province, *de Feriis Angl. Eccl.*

Ever since the Reign of *William the Conqueror*, the Bishops hold their Temporalities *per Baroniam*, by which they are bound to attend the King in Parliament. In the preceeding Ages they were always called to the Great Councils, together with the *Proceres Regni*, but were not very forward to come. What now is courted as a Privilege, was then avoided as Service and Burden.

Every Man which is to be ordained, or consecrated Bishop, shall be full thirty Years of Age. *Pref. to the Ordination Service.*

At the end of the *Common-Prayer-Book*, Establish'd by Parliament in the second Year of *Edward VI.* which is referr'd to in the *Rubric* imme-

tion, or any Mechanical Art only, so that he teach in the English Tongue only. This Act extends to Ireland. By the Act of Uniformity, and by this present Act, but One Shilling is to be paid for the License: but in the latter Act provision is made for the payment of the Duty on Stamp Paper. This Act is now repeal'd.

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immediately before *Morning-Prayer* in our present Liturgy, it is order'd, that *whensoever the Bishop shall celebrate the Holy Communion, or execute any other Publick Office, he shall have upon him, besides his Rocket, an Alb, and Cope, or Vestment, and also his Pastoral Staff in his Hand, or else born by his Chaplain.* See the Names of the present Bishops, &c. in the Appendix.

By *Stat. 26 Hen. VIII.* the Archbishops, and Bishops hereafter mentioned, may constitute Suffragan Bishops, in the Towns following, viz.

Abp.	{ Canterbury } at { Dover	
	{ York } { Nottingham and Hull.	
Bishop of	London	Colchester.
	Durham	Berwick.
	Winchester	Guilford, Southam-
		pton, Wight Ins.
	Lincoln	Bedford, Leicester,
		Grantam, Hun-
		tington.
	Norwich	Thetford, Ipswich.
	Salisbury	Skafisbury, Marlbo-
		rough, Melton.
	Bath and Wells	Taunton.
	Hereford	Bridgenorth.
	Litchf. and Cov.	Shrewsbury.
	Ely	Cambridge.
	Excester	St. Germans.
	Carlisle	Perith.

‘ Any Bishop who desires a Suffragan, may
 ‘ present two Persons to the King, of which the
 ‘ King chuses which he pleases; and he that is
 ‘ chosen

chosen by his Majesty, is to be Consecrated as other Bishops, but his Authority is to be limited by Commission from the Diocesan. There are now no such Suffragans.

But it may be observ'd, that as these Suffragans have their Sees in Boroughs, not Cities; so the four *Welsh* Bishops have their Sees in meer Villages. For *St. David's*, *St. Asaph*, *Llandaff* and *Bangor*, are not so much as Parliament Towns; and *Ely* is neither City, nor Borough, with Privilege to chuse Burgesses.

The four Bishops in *Wales* had an antient Custom of taking Mortuaries of Priests, which was confirm'd to them by a Statute made in the first Year of *Henry VIII*; but by an Act made in the last Parliament all such Mortuaries are to be extinguish'd in the Dioceses of *St. Asaph*, and *Bangor*, upon the next Vacancy (after *Midsummer* 1714.) of a Rectory *sine curâ* in the Collation of each of the said Bishops, or of their Successors; And in recompence of the said Mortuaries, each of the said Bishops have such Rectory *sine curâ* annex't to their several Bishopricks; not to be leased beyond the Term of their own Lives. All such Mortuaries are extinguish'd in the Diocese of *Llandaff*, upon the next voidance of the Treasurership of *Landaff*, with the Prebend thereunto annex'd; and in the Diocese of *St. Davids*, upon the next Voidance of the Prebend of *Longamarch* in the Collegiate Church of *Brecon*; and the Treasurership, with the Prebend annex'd, is for ever after annex'd to the Bishoprick of *Llandaff*, and the Prebend of *Longamarch* to the Bishoprick of *St. Davids* in lieu of these Mortuaries.

C H A P. VII.

Of Priests and Deacons.

THE second Order is that of *Priest*, in the Saxon *Ppcozt*, which is the same Word with the *French*, *Prestre*; the *Dutch*, *Priester*; the *Spanish* *Presbytero*; they all being evidently derived from the *Greek*, *Πρεσβύτερος*, from which the *Latin*, *Presbyter*; only our *English* Word, *Priest*, is somewhat more contracted than any of the rest.

None is capable of this Order, by our Statute Law, till he be full *twenty four Years of Age*. See *Pref. to Ordin. Service*, and *Stat. 13 Eliz. 12.* by which Act last mention'd, *All Toleration and Dispensations to the contrary are void in Law*. Young Clergymen ought to take special notice of this: for if they be not Statutable Priests, they can have no legal Right to any Benefice or Dignity, but only to be Curates or Chaplains.

No Man is to be ordained Priest, or Deacon, without a Title. This Title was originally nothing but the having one's Name enter'd in the Bishop's Roll or List, whereby he was oblig'd to bear his part in the Labours of the Clergy of that Diocese, and entitul'd to a Share in the common Stock of the Church: Since Dioceses have had other Churches, and Chapels, besides the Cathedral, a Title is an Insurance of being employ'd and maintain'd, as an Officiating Clergyman,
in

Some Cathedral, or parochial Church, or other Place of Divine Worship. 'And no one to be Ordained by the 33d Canon, but in order to be a Curate, or Incumbent, or to have some Minister's Place in some Church, or except he be Fellow, Conduct, or Chaplain in some College in the University, or be Master of Arts of five Years standing, and live there at his own Cost. The Bishop who Ordains a Clerk without Title, shall keep him till he refer him to some Ecclesiastical Living.'

No Bishop ought to admit any Person into sacred Orders, who is not of his own Diocese, except he be of one of the Universities, or bring Letters Dimissory from the Bishop of whose Diocese he is. *Can. 34.*

By *Stat. 13 Ed. 12.* He that desires to be Ordained Minister (that is, *Priest*) must bring a Testimonial from four Persons, known to the Bishop to be of sound Religion, of his Life and Doctrine, and be able to render an Account of his Faith in Latin, according to the 39 Articles, or to have special Gift or Ability to be a Teacher. The 34th Canon requires Testimonials likewise for those who desire *Deacons Orders*, as well as *Priests*, either under the Seal of some College in the Universities, or of three or four grave Ministers, and other credible Persons, who have known his Life and Conversation for three Years next before.

Further, both he that is to be admitted Priest, and he that is to be admitted Deacon, must take Oaths enjoined by the first of *William* and *Mary*, before his respective Bishop, and make

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his Subscription to the King's Supremacy, the Lawfulness and Use of the Liturgy, and the 39 Articles. See *Can. 36.* and not only that Canon, but the *Stat. 13 Eliz. 2.* requires the 39 Articles to be subscribed by those who would be ordained Ministers.

'Tis entirely at the Bishop's Discretion, whether he will admit one to the Order of Priest, or Deacon; nor is he obliged to give any Reason for his Refusal.

By receiving Priests Orders, a Man is expressly impower'd to *preach in the Congregation where he shall be thereunto appointed.* See Bishop *Stillingfleet's Eccl. Cases, p. 18.* But they who do ordinarily Preach in other Churches, where they are neither Incumbents nor Curates, must have a License from the Bishop. But even Deacons may preach in the Churches where they are Curates, says *Lynd. L. 3. T. 4. Cap. præterea in Gloss.*

I suppose the first *Prohibition* against Preaching, was made at the same Time that the first Statute was enacted for *burning Hereticks*, viz. in the Reign of *Henry IV.* for then, *A. D. 1408,* Archbishop * *Arundel's Constitution, Reverendissima,*

* *There is one Clause in this Constitution, which Clergymen, who are called to be licensed, ought to be apprized of; that is, that the Examination of such Persons to be licensed, and their Letters from the Bishop, ought to be dispatch'd gratis, without demanding any Money. Lynd. in his Gloss. says, That Money ought not to be accepted, tho' it be offer'd. The Canon is certainly still in force, as much as those in 1603.*

diffinæ, was publish'd, forbidding any to Preach without a License from his Diocesan. But in this there was an express Reserve for all perpetual Curates: Such are declared to be licensed of common Right to preach to the Place and People of their own Cure. And there is the same Exception in the Stat. 2. H. IV. c. 15. But Parish-Priests, or Temporary Vicars, i. e. Assistants (see Chap. 24. beginning) were only allow'd to rehearse, and paraphrase the Creed in the Words of Archbishop Peckham, with which Lyndwood begins the Provincials. This was the Method then taken to stifle the Doctrine of Wickliff. Henry VIII. when he had declared himself Head of the Church, went farther, forbidding all Sermons from the 12th of July to Michaelmas-day 1536, except in Cathedrals, or before the Bishops; and from Michaelmas-day forward, that none should Preach on that Subject, but only to read the Articles to be sent them, without adding, or diminishing. And in King Edw. VI's Reign, 1548, came out a Proclamation, wholly silencing all Preachers.

In Q. Elizabeth's Time the Clergy being so very Illiterate, that by her Injunctions of 1559, the Archdeacon is required to give every Curate a Lesson out of the New Testament in Latin, to be conn'd by him against the next Visitation; and farther, the State having a jealous Eye on the Clergy, as if they were not perfectly well affected to the Reformation, none were permitted to preach without License, but to study to read the Homilies gravely and aptly; and they that were instituted, subscribed a Promise to this effect; and this continu'd in some Measure

in the next Reign : For Ministers, not licensed to Preach, by the 49th Canon then made, are not permitted to *expound any Text of Scripture, but only to read the Homilies* : even in their own Cures ; but the occasion of those Canons being now taken away, our Bishops do wholly, and justly forbear to put that Canon in execution : and every *Priest* is permitted to preach, at least in his own Cure, as he may, and ought to do by the old Canon Law, by the Charge given him at his Ordination, and by the very nature of his Office. For wholly to forbid any Clergyman to preach to those, the Cure of whose Souls is committed to him, is a most excessive Strain of Authority ; and such as the *Popish* Prelates never thought fit to make use of, when they were in the height of their Fury, against what they falsely called *Heresy*. Indeed, so gentle is the present Government in the Church, that even Deacons are, by connivance, generally allow'd to preach without License.

For the Encouragement of *Preaching Ministers*, it was enacted, by a Clause in the 13 *Eliz.* 12. that *No one shall be admitted to a Benefice, with Cure of Souls, of above 30 l. per An. in the Queen's Books ; unless he be Bachelor of Divinity, or a Preacher lawfully allow'd by some Bishop, or one of the Universities ;* and this is yet in force.

He that is ordained *Priest*, and is Doctor of Divinity, is qualify'd for any Dignity in the Church, under that of a Bishoprick. The Local Statutes of the Cathedrals, and other Ecclesiastical Corporations, do generally make that Degree, either in Divinity or some other Faculty,

ty, necessary for their greater Dignities ; and no one can hold two Benefices, that is not Master of Arts, *Can. 41.* And farther, the Incumbents of all Churches, united by *17 Car. II. c. 3.* must be Graduates in one of the Universities. See also the Chapter of *Pluralities.*

The Qualifications for Deacon's Orders, are, in the main, the same that are required for Priests : but in this they differ, that a Man cannot be dispensed with for receiving Priest's Orders before he be full Twenty Four : but a Faculty or Dispensation is expressly allow'd for him that is ordain'd Deacon, before he be Twenty Three. See *Preface to the Ordination Service.* And indeed, by the old Form of *Ordination*, a Deacon was not requir'd to be more than Twenty One. It seems now to be left to the Archbishop's Discretion, at what Age to admit one to be a Deacon. And 'tis not unusual for Diocesan Bishops to admit Men to Deacon's Orders under Age, without any Dispensation.

Farther, A Man ought regularly to be a Deacon a whole Year before he be ordained Priest ; but the Bishop may ordain him sooner if he please. *Rubrick to Ordination Service.* But it were much to be wish'd, that this Rule were strictly observed. For one main Use and End of Deaconship in the Church, is, to be a Time of Probation, that it may upon Trial appear, whether he be a Person fit to have the Cure of Souls committed to him ; and this would in a great measure prevent the Practice of such, as can in Ten Days Time, from being Beaus, become Dignitaries, or Incumbents ; and who are moved by nothing but Profit, to take on them

the Holy Order; for if they were to stay a whole Year in the Order of Deaconship, Lapse might incur, and their secular Ends be defeated.

The Deacon's Office, with us, consists in Reading Divine Service and Homilies, Catechising the Youth, Baptizing Infants in the Priest's Absence, Burying, Marrying. See *Watf. c. 14. p. 103.*) and to be Assistant in the Care of the Poor; which last Part of his Office is almost set aside, by that generous Provision for the Poor, made by several Statutes in, and since the Reign of Queen *Elizabeth*, not to be parallel'd in any other Nation.

The Form of Ordaining Deacons expressly says, that *'tis the Office of a Deacon to assist the Priest in the distribution of the Holy Communion;* and such, I suppose, has always been the practice: but Dr. *Watson* moves a Scruple, *Whether the Deacon, by distributing the Cup, do not incur the 100l. Penalty laid by that Act,* (which ratifies the Ordination-Office) viz. 14 Car. II. 4. *on those who administer the Sacrament of the Lord's Supper without being ordain'd Priests.* But sure this might have been spared; for to administer the Sacrament of the Lord's Supper, does often signify the whole Action, or Solemnity of the Communion; and he that performs one Part, and that which is assign'd him by the Law and Canon, does not do the whole; nor does any one call *the Cup* alone, *the Sacrament of the Lords Supper*: But that it may appear that this Law was not intended for a Snare, let it be observed how cautiously 'tis worded, viz. that *no Person shall presume to*
 Con.

Consecrate, and (not or, as Dr. Watson reads it) administer the Sacraments, &c.

A Deacon, before this *Act of Uniformity*, was capable of being Incumbent in a Church with Cure, and a Layman in a Prebend, or other *Sine Cure*; but now a Deacon can only be a Chaplain, or assist in serving a Cure, or at most preach a Lecture: For he may *preach, if he be thereunto licensed by the Bishop*; and a License granted by any one Bishop, or by either of the Universities, qualifies a Man to preach any where else. *Watf. c. 15. p. 104.*

Our Church allows no Orders to be good, but what are conferr'd by Bishops; nor does it appear, that any Church did ever approve of Ordination perform'd without a Bishop, till a contrary Practice began of late in *France* and *Germany*; but the Primitive Church was the Pattern by which ours was reformed.

If any object a Crime against a Person to be Ordained, the Bishop is to forbear, till the Party be found clear of that Crime. *Rubr. Ord. Service.*

He that is born Illegitimate, cannot be admitted into Holy Orders, without a Dispensation from the King or Archbishop; and if he take a Benefice, he may be depriv'd of it, till such Dispensation be obtain'd. *Watf. c. 14. p. 102.* Let the Clergyman see his Name, and Ordination enter'd in the Bishop's Register. For if he chance to lose his Letter of Orders, or if that be suspected through some Fault of the Secretary, as it often happens, then the Bishop's Register is the only remaining Evidence of his Ordination; unless, by chance, some Persons

that were present at his Ordination can be found.

The Bishop, if he thinks fit, may Ordain on any *Sunday* or *Holy-day*; but the Times mention'd in the Canon, and referr'd to in the *Rubrick*, are the *Sundays* next after the *Ember-days*; which, in the *Laws of King Alfred*, c. 39. are call'd *ymb-pýne dagar*, and in those of *Canute*, c. 16. *ymb-pen fæsten*, i.e. the circular Days or Fasts: The first of these Weeks is in Spring or Lent, when Corn and other Seeds are sown; the second at *Whitsuntide*, when they are growing; the third in *September*, when they are gather'd and imbarnd; the fourth in *December*, when they are marketed and used; on which four Seasons the *Circle of the Year* turns. Mr. *Somner* therefore thinks that these Fasts were first instituted, to beg God's Blessing on the Fruits of the Earth, and on ourselves in the use of them, and not only on account of Ordination. The Canonists call these *Ember-Weeks* (as we now corruptly write them) *Quatuor Anni Tempora*, by which very Words they denote likewise the Four Quarters of the Year. See *Lyndwood, in Gloss. L. 1. T. 11. Quatuor in Anno.*

C H A P. VIII.

Of Deans and Chapters, Archdeacons and Rural Deans.

THE Bishops, in ancient Times, had their Clergy residing with them in their Cathedrals, to be assisting to them in the Performance of Divine Office, and administering the Government

ment and Discipline of the Church ; and even after Parochial Settlements were made, yet still there was a Body of Clergymen, who continu'd with the Bishop at his Church, and were his Family, maintain'd out of his Estate : and after the Monastick Life grew into Reputation, many Bishops chose to have *Monks* rather than Seculars, to live with, and attend them in their Cathedrals : and these Bodies, of Monasticks and Seculars, had the same Privileges of chusing the Bishop, and being his Council, which the whole Clergy of the Diocese, in conjunction with the Bishops of the Province, had before : but by degrees their Dependance on the Bishop, and Relation to him, grew less and less, and they had distinct Parcels of the Bishop's Estate assigned for their Maintenance, till at last the Bishop had little more left him than the Power of Visiting them, and that very much limited ; and was scarce allow'd to nominate half of those to their Preferments, who all were originally of his Family : and, on the other side, these Capitul Bodies did by degrees lose their former Privileges ; particularly that of chusing the Bishop, for which the Kings of *England* had a long struggle with the Pope ; till at last *Henry VIII.* effectually determin'd this Controversy in favour of himself and Successors. For this Power is now really in the Crown, by *Stat.* 25. c. 20. of that Prince, and the Dean and Chapter have only a Shadow of it. Farther, the same Prince ejected the *Monks* out of those Cathedrals where they were before, and placed Secular Canons instead of them ; and those whom he thus regulated, are called, *The Deans*
and

and Chapters of the new Foundation; such are *Canterbury, Winchester, Worcester, Ely, Carlisle, Durham, Rochester, Norwich*: and besides, he erected five Cathedral Bodies *de novo*, and endow'd them out of the Estates of dissolv'd Monasteries, viz. *Chester, Peterborough, Oxford, Gloucester, Bristol*, which were by him made Episcopal Sees, as also *Westminster*, but the Bishoprick of this last Place was sunk, and the Monastery turn'd into a Collegiate Church by Queen *Elizabeth*.

Deans of the old Foundations, as *York, S. Paul's* and the rest, are brought to their Dignities much in the same manner with Bishops; whereas the Deans of the new Foundation are Installed by virtue of the King's Letters Patents, without either Election or Confirmation.

Canons, or Prebendaries, come into their Preferments by Presentation, Institution, or Collation, and Induction, *Watf. c. 15. p. 121.* but the Prebendaries of *Westminster* are Install'd by virtue of the King's Letters Patents, without Institution, &c. *ibid. 1. l. 2.*

Before the Restauration and Act of Uniformity, meer Laymen were sometimes made Deans and Prebendaries; and therefore it has been argu'd by some, that they are not Ecclesiastical, or Spiritual Bodies; but the contrary Opinion is the truest, especially since none but Clergymen are now capable of them. See *Godol. Abr. c. 32. §. 34.*

And what more fit, than that they should be in Holy Orders, who were all originally intended to be the standing Council or Presbytery of the Bishop, to assist him in Ordinations, Deprivations,

ons, *examining* and *censuring* all grosser Criminals; and to defend the Doctrine and Government of the Church by their Writings and Sermons, which can scarce be expected from the Parochial Clergy, who want both Means and Leisure for such Business: therefore Dr. Chamberlain, in his *Present State of England*, stiles these Bodies, the *Seed-Plots*, whereout from time to time, fit Persons are to be chosen for the Government of the Church: and that in the mean time, by their eminent Piety and Charity, they are to be Patterns to the inferior Clergy: but, perhaps the Reader may think he carries the Notion too far, when in the same Paragraph he says, that they (the Cathedral-Clergy) having left the Country, and living in a Society, by little and little, put off the Familiarity of the inferior Country Clergy, and thereby render themselves more fit to be set over them in Government; especially when he adds, that they are to instruct the Country Clergy, and direct them how, and what to preach.

Deans and Chapters, besides that Authority which they have within their own Bodies, have sometimes an Ecclesiastical Jurisdiction in several neighbouring Parishes and Deanries, and they also generally, as well as Bishops, have a Temporal Jurisdiction within their own Manors; by virtue thereof their Steward, or Seneschal, holds a Court of Pleas.

By the Canon Law the Dean and Chapter are Guardians of the Spiritualities, during the Vacancy. And it has been allow'd, that of Common Right they are so at this day in *England*, and

and that the Archbishop has this Privilege only by Prescription. See *Godol. c. 4.* And by *Statute pro Clero*, in the Time of *Edw. III.* the Dean and Chapter, or Prior and Convent, are enabled to take a Lease of the vacant Bishoprick, from the Chancellor, and Treasurer, before any other, at a reasonable Rate, without Fine: and so by this means they were Guardians of the Temporalities too, that so they might preserve them from Waste and Destruction, as the Statute expresses it: and such Leases are expressly exempted from the Penalties laid on Clergymen, who take Leases by *Stat. 21 H. VIII. c. 13.*

The Deans and Chapters of *Canterbury* and *York*, during the Vacancy of either Archbishoprick, are still Guardians of the Spiritualities of the several Provinces and Dioceses; that is, all the Ecclesiastical Jurisdiction belonging to the Archbishops, is, in the vacancy of the Sees, exercised by them, or their Commissioners; they Visit, hold Courts, grant Dispensations, Institutions, &c. and in former Times presided in Convocations, during the Vacancy of the Archbishoprick, (but of late Years the Bishop of *London* presides in the Vacancy of *Canterbury*, by Commission from Dean and Chapter; and the Bishop of *Durham*, I think, in the Vacancy of *York*;) and as for Matters of Order, they grant a Commission to some Bishops of the same Province.

There was at *Canterbury*, till the Time of Archbishop *Lanfrank*, who was preferr'd to that See by means of *William the Conqueror*, a constant Suffragan, entitled, *The Bishop of St. Martins*; who, *sede plena*, perform'd all things

things relating to Order in the Diocese, in the Absence of the Archbishop; and, *sede vacante*, in the whole Province. See *Somn. Antiquity of Cant. in Catal. of Archdeacons*.

ARCHDEACONS.

As Deacons were all originally the Attendants and Servants of their several Bishops in Church Affairs, so it is certain, that at the beginning of the fifth Century at farthest, there was in several Dioceses one chose out from among the rest, who had the Title of *Archdeacon*. By degrees this Office became universal, and they who had it, being always near the Bishop, so improv'd their Advantage, that by the tenth Century they began to share with the Bishop in his Authority. In *Eynwood's* Time it was a settled Rule, that the Archdeacon, of common Right, could Visit, *per modum scrutationis simplicis*; that is, I suppose, so far only as to hear Causes, and enquire into criminous Matters: for he presently adds, that he had not Power, in his own Name, to pass Censures, unless by special Custom; and yet 'tis plain, by what he says at another place, that Archdeacons, even in his Time, did suspend Clergymen *ad modicum tempus*, and Excommunicate where there was not a Custom to the contrary, *L. 1. T. 10. c. eisdem, verb. Compellant*, so that their Authority was in a thriving Condition. At another place he says, that they might Excommunicate tho' they were not in Priest's Orders, if the Custom of the Place were so, *L. 5. T. 17. c. item, v. non ligent*. See *Pro. L. 1. T. 10. Gloss*. ' But none who understand
' the

' the ancient Constitution of this Church, can
 ' suppose either Archdeacons, or Deans and
 ' Chapters, to have any original Jurisdiction,
 ' since that Right was in the Bishop, before
 ' there were either Archdeacons, or Deans and
 ' Chapters.' Bp. *Still. Eccl. Cases*, p. 338.

However, 'tis allow'd that Archdeacons have
 now a Power, not only to visit, but suspend,
 excommunicate, in many places to prove Wills,
 and, in some, to institute to Benefices : nay, 'tis
 given us for Law, ' That there are Archdeacon-
 ' ries in *England*, which have no Dependence
 ' on the Bishop, but are totally exempt.' See Bp.
Still. ubi supra And yet *Stat. 14 H. VIII. c. 12*,
 expressly says, that *there lies an Appeal from*
the Archdeacon's Court to the Bishop's.

'Tis one Part of the Archdeacon's Office to in-
 duct all Clerks into their Benefices, within his
 Jurisdiction ; and 'tis the special Privilege of
 the Archdeacon of *Canterbury*, to induct, or
 install all Bishops within that Province. See
Somn. ubi supra.

As long since as *Lyndwood's Time*, Archdea-
 cons were permitted to take Priest's Orders, and
 yet to retain their Office and former Title ; and
 it was the common Opinion then, that the
 Archdeacon, being in Priest's Orders, was supe-
 rior to a Cathedral Dean, *Pr. L. 3. Tit. 1. c. 1.*
verb. Decani. Now, by the Act of Uniformity,
 he is oblig'd to be in Priest's Orders. The Cano-
 nists gave the Precedence to the Archdeacon, be-
 cause of the largeness of his Jurisdiction : but
 the Dean is allow'd to be superior within the
 Cathedral. It seems not material in this Point,
 whe-

Whether the Archdeacon be Doctor or not ; for *Jurisdiction* goes before *Title*.

Archdeacons and other Ordinaries have Power to visit Parochial Libraries, to order the shutting them up on the Death of the Incumbents, to require Security for the Preservation of them: and Books lost must be su'd for in their Names. *Stat. 7 Ann. c. 14.*

Disputes have of late arisen between Archdeacons and their Clergy, concerning the former's Power to command any of the latter to preach a Sermon at the Visitation. It is not a usual Case. But Visitors are bound by *Canon-Law* to preach in their Visitations, or to maintain others to do it for them. See the Case of a Rector refusing to preach, &c.

RURAL-DEANS.

Besides *Archdeacons* there were formerly *Rural-Deans*. These Officers were first introduc'd about the Time of the Conquest. Our Dioceses are still divided into Deanries ; and those Clergymen, who, under the Bishop and Archdeacon, had the peculiar Care and Inspection of the Clergy and Laity of such a District as is now call'd a *Deanry*, were *Rural-Deans*. They had Power to Visit, and hear Causes, and a sort of Authority, latterward, to correct delinquent Clergymen, but not to proceed to Censure ; both they and Archdeacons were prohibited to meddle with Matrimonial Causes. They were sometimes allow'd to take the Consecrations of the Clergymen within their Jurisdiction ; at other times, particular Persons were assign'd

assign'd by the Bishop for that Purpose. They were oblig'd to have a Seal of their Office; but were removeable at pleasure; but jointly, by the Bishop and Archdeacon. Sometimes they were beneficed within the Deanry, which they had the Care of, sometimes not. See *Province. L. 1. T. 2. L. 2. T. 1. L. 5. T. 16. Const. Otia. Quoniam Tabell. Quoniam quod.* The Incumbents within the Deanry were call'd, *The Rural Dean's Chapter.*

But there are some Deans with Jurisdiction, but without a Chapter, as *Battel and Bocking*; some Chapters without a Dean, as *Southwell*; some Chapters that have no Head but their Bishop, as *St. David's* and *Llandaff*; at the former, the Chantor: at the latter, the Archdeacon presides, in absence of the Bishop, or vacancy of the See. And lastly, there are some Deans and Chapters in Churches, where there are no Episcopal Sees, as *Westminster* and *Windsor*; and these are therefore call'd Collegiate Churches; as those likewise are which have a Chapter, but neither Dean nor Bishop.

C H A P. IX.

Of Benefices, Donation, Collation, Presentation, Institution, Induction, Subscriptions, and Declarations; and also of Curacies.

ALL Church Preferments, except *Bishopricks*, are *Benefices*. *Godol. cap. 18. §. 12.* and all *Benefices* are sometimes by the Canonists call'd *Dignities*, *Pro. L. 3. T. 1. Gloss.* But *Bishopricks*,
Dean-

Deanries and Archdeaconries, are most properly call'd *Dignities*, both in Law, and common Discourse, but neither *Lyndwood*, nor *Watson*, allow Prebends, in strictness, to be *Dignities*. *Pro. L. 3. T. 7. Gloss. Comp. Incumb. p. 4, 5.* And yet 'tis allow'd by all, that they must be *Dignities*, if there be a *Jurisdiction* annex'd to them.

In Common Law Deans and Chapters are call'd *Corporations Aggregate*.

Bishops, Rectors, and Vicars are *Corporations Sole*, at Common Law.

A Prebendary, who has a distinct Estate, and yet a Vote in Chapter, is call'd a *Corporation Sole*, and a Member of a *Corporation Aggregate*.

These are all call'd *Corporations*, because they have a Power to receive Lands and Goods, for the Use of themselves and Successors (except where they are restrain'd by Law) to sue and be sued jointly, &c.

But having already spoke of *Prebends*, I am now to say something of *Benefices*, so commonly call'd; which are *Parsonages*, or *Rectories*, and *Vicarages*.

Parsonages are Churches endow'd with Glebe, Manse, Tythes, and all other Duties payable by the *Parishioners*; and such originally were all *Parish Churches*. But the *Monks* and other Regulars, before the Reformation, got near half of the best *Benefices* in *England* appropriated to their Houses; these they serv'd at first by some of their own Bodies; afterwards the *Bishops* oblig'd them to settle *Secular Priests* in them, to serve their Cures. When *H. VIII.* suppress'd the

the Monasteries, he gave of these Benefices some to Bishops, some to Cathedral and Collegiate Bodies, and very many to meer Laymen. And even to this Day, any Benefice may be appropriated to a Bishop, Dean and Chapter, &c. with consent of King, Patron, and Ordinary.

Vicarages are Benefices created for the Maintenance of those Clergymen who serve in Churches, where some, or all the Tythes are impropriated. At first the *Vicar* was a meer *Curate*, as we now speak, temporary and removable at pleasure: by degrees, some *Vicars* got settled Maintenance, distinct from the Impropriator, which Maintenance consisted of a Glebe and Manse, and for the most part some Proportions of Tythes; but in some Places, only a Pension from the Impropriator; these were, and still are in Law call'd *Perpetual Vicars*, or *Vicars Endow'd*, to distinguish them from *Temporary Vicars*, i. e. Curates.

In the Year 1222, a Constitution was made by Archbishop *Langton*, that no *Perpetual Vicar* should have a Portion (*viz.* of Glebe and Tythes) of less value than five Marks *per An.* and that could be so *let to Farm*. But in *Lyndwood's* Time, even temporary, stipendiary Vicars had eight or ten Marks *per An.* which after Sir *H. Spelman's* Computation was as much as 60*l.* now.

Some Benefices that formerly were sever'd by Impropriation, have since been consolidated, and all the Glebe and Tythes been given to the Vicarage, and many Vicars have a good part of the great Tythes, or a Lease of them upon reasonable Terms from the Ecclesiastical Impropriators,

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tators. The Law makes no Distinction be-
tween these Vicars and others; but these are
commonly call'd *Vicars Endow'd*: In this, and
many other Particulars, the Language of the
Law differs from that of common Discourse.

There is another difference in Benefices; as
to their Patronage, or the Method whereby the
Clerk is to be put in possession of them.

1. Are Presentative Benefices; for the ob-
taining of which, the Patron must present his
Clerk to the Bishop, or other Ordinary, to be
instituted, and the Bishop commands the Arch-
deacon to induct him.

2. Collative Benefices are those which are in
the Gift of Ordinaries, and within their own
Jurisdiction; in which Case there needs no
presentation, but the Ordinary collates or in-
stitutes the Clerk, and sends him to the Arch-
deacon, or other Person, whose Office it is to
induct him.

3. Donative Benefices, are those which being
exempt from the Jurisdiction of the Ordinary,
are visitable only by the King, or other secular
Patron, who puts his Clerk into Possession of
the Benefice, by virtue of an Instrument under
his Hand and Seal, without Institution or In-
duction, License or Examination by the Ord-
inary. See a *Form of Donation*, Append. No. 5.

Again, Some Benefices have the Cure of Souls
annext to them; some are said to be Benefices
without Cure.

Advowson,

Advowson, or Patronage of Presentative Churches.

The greatest Part of Benefices in the Church of *England* are Presentative: The *Thanes*, or Lords who built and endow'd Churches, having at first articulated with the Bishops, that they should have the Privilege of presenting fit Clerks to serve, and receive the Profits of the Churches founded by them; which Right is therefore justly continu'd to their Posterity, and those who have purchas'd of them.

In *Spain*, and some other Countries, no Patron can alienate an Advowson, but by selling the Manor to which it belongs; and still, by our Law, if the Lord of a Manor grant to another Person his Manor, *cum pertinentiis*, the Advowson or Patronage of any Church, or Churches, appendant to that Manor, passes to the Purchaser, or other Grantee, tho' there be no express mention of the Advowson; nay, tho' the Words *cum pertinentiis* be omitted. *Watf. c. 10. p. 56.* But in a Grant from the Crown, the Advowson must be particularly express'd; by *Stat. 17 Edw. II. c. 15.*

An Advowson may be sold, or granted during the Voidance of the Church; but the Presentation to the Vacant Church does not pass with the Advowson; but 'tis a thing distinct from it: nay, it can't be sold while the Church is vacant: And if the Advowson be purchas'd in the vacancy, with intention that a certain Clerk be presented, 'tis Simony. *Watson 23. 60.*

Of common Right the Parson is Patron of the Vicarage, but in Fact 'tis often otherwise: For, when

When the Spoil of the suppress'd Monasteries is divided, the Parsonage was frequently given to one, and the Patronage of the Vicarage to another; tho' they had both of them formerly belong'd to the same Monastery. The Parson being Patron of the Vicarage, may, if he please, consolidate both into one Benefice; if upon vacancy of the Vicarage he present one to the Rectory of that Church, and by this means, the Benefice is perfectly disappropriated, and all so remain.

Let the young Clergyman take special Care at the Patron, from whom he accepts the Benefice, have a true and undisputed Right of Presenting; for otherwise he may be put to excessive Charges in defending his Patron's Title, and yet at last lose the Benefice.

We are on all hands assur'd, that 'tis current Law, That if one, who is not rightful Patron, in due form of Law, without any corrupt Contract, present another Person to a *Presentative Living*, and in time of Peace; and if this Presentation do take effect, and Institution and Induction be thereupon obtain'd, and the Clerk remain Six Months in Possession, before the true Patron do commence his Suit, that he thereby becomes lawful Incumbent, and may enjoy the Living during his Life, and tho' at the next Turn the true Patron may recover his Right in most Cases, * yet not in all; and that this in
Law

But now by Stat. 7 Annæ c. 18. he or she that wou'd have had a Right, if no Usurpation had been, may present, maintain her Quare impedit upon the next, or any subsequent Avoidance, notwithstanding such Usurpation.

Law is a good Usurpation against all Persons except the King; and that such a Title may be maintain'd, in case the Usurpation be made against a Bishop, tho' not against his Successors. See *Watsf. c. 13.* throughout.

If a Benefice fall vacant in the Gift of any Person that is attainted or outlaw'd, the King shall present for that Turn, not the Patron. *Watsf. c. 11. p. 69, 70.*

If the Patron be excommunicate by the space of forty Days his Clerk may be refused. *Godol. cap. 23. sect. 2.* But *Quære*:

If the Patron be a *Papist*, convicted by *Stat. 3 Jac. I. c. 5.* or refuse to make and subscribe the Declaration mention'd *1 W. & M. 26.* all *Presentations* and *Grants* of *Voidances* from him are null, and one of the *Universities* shall present. But as to the first Statute, that is now of little effect; for we have now few or no *Papists legally convicted*; and as to the other, they often evade it by Deeds, whereby the Right of Patronage is convey'd to some Protestant, who presents the Clerk nominated by the *Papist*. But now, by a *Statute* of the last Parliament, every *Papist*, and Child of a *Papist* under 21 Years of Age, and every Mortgagee, or Trustee, appointed, (whether in Writing or not) by such Person, or for them, are made incapable of Presenting to any Benefice, School, Hospital, &c. And the Presentation belongs to one of the Two Universities, according to the *Stat. 3. of James I.* (See *Append. No. 16.*) The Bishop, upon suspicion, may examine both the Clerk and Patron upon Oath, and tender the Test to him who presents: and if he refuse to take

make it he is to signify so much to the University, to which the Presentation belongs. If the Clerk refuse to discover who is the true Patron upon Oath, his Presentation is void. The University may exhibit a Bill in Chancery against any one, who they suppose can make discovery; or they may bring a *Quare impedit* in behalf of their own Clerk: and the Court may examine both the suspected *Papist* and the Clerk upon Oath. No Lapse shall incur by reason of such Bill, (if exhibited before Lapse be made) till three Months after such Bill be answered, or the same be taken *pro confesso*, or the Prosecution thereof deserted.

If the King mistakes his Title; as for Instance, present *Ratione Lapsus*, when the Adversor is in his *Jure Coronæ*, the *Presentment*, and all that follows thereupon, is void in Law. *Watf. c. 20. p. 154.*

Presentation made, or bearing Date, while the Church is full of another Clerk, is void and null. *Watf. c. 20. p. 170.*

If a Corporation, in presenting, mistake the name of their Foundation, the *Presentation* is void; and so 'tis if a Master and Fellows, or a Dean and Chapter do present their Dean or Master: but if they present one of their Prebendaries, or Fellows, 'tis a good *Presentation*; and so 'tis if two Joint-Tenants of the next Avoidance do present their Grantor; or if one of those Joint-Tenants present the other, he being of Holy Orders. *Ibid. p. 154, 155.* In other Cases the Bishop may require a Joint-Presentation. *Ibid. p. 159.*

If the King present a second Clerk to a Living vacant, this is an effectual Revocation of the first; and the Bishop is a Disturber, if he do not institute the second Clerk: but if the first Clerk have got Induction before the King revokes, he is safe. *Ibid.*

But if a common *Patron* present first one Clerk, and then another, the Bishop may institute which he pleases. *Ibid.* p. 157.

A *Patron* cannot present himself, but he may pray to be admitted by the Ordinary, and Admission, upon such Petition, is good: but if he present himself, tho' by a strange Name, he may be put out. *Ibid.*

Presentation may be made by Word of Mouth, in case the Patron be in presence of the Ordinary: only *Corporation Aggregate* must present under their common Seal. *Watf. c. 15. p. 105, 106.*

If a married Woman have the right of Advowson, she cannot present by herself; but the Presentation must be in the Name of the Husband and the Wife (except in case of a Queen-Consort) or in the Name of the Husband only. *Watf. c. 9. p. 47.*

'Tis a Question, if it be more proper for the Heir under Age, or the Guardian in his Name, to present to a vacant Living; there are Precedents for both.

In case the Patron do not present within Six Months, the Benefice lapses to the Bishop; if he do not collate within Six Months following, it lapses to the Archbishop; if he neglect to collate within six Months, it falls from him to the King, who may take his own time, and may remove any Clerk inducted into the Living without his Present-

Presentation, after the 18 Months are past; but if the Clerk that was Intruder, die, or resign without Fraud, before the King Presents, he has lost the Advantage of the Lapse; for he has not one Turn, and that the next, *Watf. c. 12. p. 78.* This is meant of a Clerk presented by the true Patron, and instituted by the Bishop, to a Benefice laps'd to the King, not of one collated by the Bishop.

But if the Patron present his Clerk before the Bishop hath collated, tho' the Six Months are expir'd, yet the Presentation is good; and if he present to the Bishop, before the Metropolitan have collated, his Presentation is good; tho' Twelve Months are passed since the Vacancy. If the Metropolitan collate before Twelve Months are expir'd, this is no Bar to the Ordinary or Patron; but if the Ordinary, after Twelve Months are expir'd, do collate, this bars the Patron, and puts the Metropolitan to his *Quare impedit*. The Months are to be reckon'd by the Almanack, not by the Weeks. *Watf. c. 12. p. 77, 78.*

Sometimes it happens, that one has Right of Nomination, and another of Presentation to the same Benefice; that is, the latter may be oblig'd to present that Clerk whom the former thinks fit to name to him: And in this Case, he that has the Right of Nomination, is the true Patron. *Watf. c. 12. p. 77, 78.*

When it is said that the Patron must present within Six Months, the meaning is, that he must either in Person, or by his Letters Missive, offer his Clerk to the Ordinary within that time; it is not sufficient that the Letters bear Date before

that time be expir'd. You have the Form of such a Letter Missive in the *Appendix*, No. 1. And indeed, it is safest for the Clerk to be actually presented some Weeks before the Six Months are pass'd : For otherwise, the Ordinary may complain, that he has not time to examine him, and so Lapse may incur. But if the Ordinary do wilfully delay to examine the Clerk, no Lapse shall incur. *Watf. c. 24.*

The Bishop, or other Ordinary, *viz.* Guardian of the Spirituality, or Vicar-General, is Judge of the Ability of the Person presented ; and to this Purpose he may examine him, and take time to enquire into his Life and Doctrine: *Watf. c. 20. p. 147.* And both the Canon and Common Law, allow the Bishop 28 Days after Presentment made, for this Purpose. And in case the Ordinary bid the Clerk come to him at a more convenient time to be examin'd, and the Clerk do not come, the Ordinary may take the advantage of the Lapse. *Watf. 20.*

The Clerk is not bound to shew his Letters of Order to the Bishop, but he must prove his Ordination ; and this is the shortest and easiest Way of proving it. And if a Layman or Deacon do receive Institution, yet 'tis null and void, by *Stat. 14 Car. II. c. 4.* yet all his Ministerial Acts, *viz.* Baptism, Marriages, &c. are good at Common-Law, if performed before he be actually dispossessed. *Watf. c. 14. p. 104.*

'Tis a sufficient cause of Refusal, if the Clerk's being presented to a Benefice in *Wales*, with Cure of Souls, do not understand *Welsh* ; or if a Person that does not understand *English*, be presented to such a Benefice in *England* ; some
(among

(among which my Lord Coke) are exprefs against admitting a *Frenchman* to any Benefice, and there were feveral Statutes to this Purpofe; but 'tis doubted, whether they be in force. *Watf. c. 20. p. 139, 140.*

Perjury, Schifm, Herefy, and whatever other Crimes a Clergyman may be depriv'd for, are fufficient Reafons for the Bifhop to refufe him Institution.

It has been faid, That a Clerk cannot be refus'd for being a Haunter of Taverns, and a Player at unlawful Games; becaufe they are only *Mala Prohibita*; and yet this has been deny'd to be Law. See *Watf. c. 20. p. 140.* However, 'tis certain, that *Drunkennefs* is a fufficient Caufe; for that is *malum in fe*.

Baftardy, without Dispensation, is a juft Objection; but that the Clerk prefented is the Son of a former Incumbent, is not a good Reafon of refusal. For that Canon, *Ne Filius fuccedat Patri*, is generally held, not to have been receiv'd in *England*; *Still. Eccl. Cafes, p. 359.* But if the Ordinary does refufe fuch a Clerk, and the Patron prefent another, and the fecond get Institution and Induction, the firft is without Remedy. So that if the Clergyman fufpect that this may be his Cafe, his fafeft way is to get a Dispensation beforehand from the Arch-bifhop of *Canterbury*, or if he be to be collated by an Ecclefiaftical Patron, it is much if he do not firft require him to purchafe a Dispensation.

When the Bifhop refufes to admit the Clerk prefented, he muft in reasonable time (22 Days have been adjudg'd too long a delay) fend Notice to the Lay Patron in Perfon, if to be found

within the Country : if not, by a Writing fixt on the Door of the vacant Church ; and on such Notice, the Patron must present another Clerk within the Six Months, accounting from the Time the Voidance happen'd ; if he find that the Bishop's Reasons for refusing the Clerk presented are sufficient.

But the Bishop is not bound to give any such Notice to an Ecclesiastical Patron, *e.g.* a Dean, or Archdeacon ; nor is such a Patron allow'd to vary ; that is, to present another Clerk, except the Bishop give special Leave : So that if an insufficient Clerk be presented by a Church Patron, the Living is thereby laps'd to the Bishop. *Watf. c. 20. p. 158.*

But, if the Exceptions against the first Clerk, presented by any Patron, are not thought sufficient ; the Clerk has his Remedy in the *Ecclesiastical Courts*, and the Patron in the *Temporal*, and the former by a *Duplex Querela*, the latter by a *Quare Impedit*, against the Bishop.

The Bishop's Objections must be not only in General, but Special, *v.g.* not that he is a *Heretic*, at large ; but that he is *Heretical*, as to such, or such particular Articles of Faith, &c.

If the Bishop afterwards admit a Clerk, whom he at first refused for Insufficiency, in case the Patron have within his Six Months presented another, the Law calls him a *Disturber* ; and the latter shall turn out the former. *Godol. c. 23. p. 3, 39.*

INSTITUTION

If the Bishop admit a Clerk as sufficient, he either institutes him in Person, or else gives him his *Fiat*, and sends him to his Vicar-General, Chancellor, or Commissary, to do it for him.

It appears that Archbishop *Sancroft*, when he had resolv'd against taking the Oaths to K. W. and Q. M. and so could not in reason administer them to others, did send his Clerks to be Instituted to his *Collative Benefices*, by the Vicar-General.

A Petition was drawn up, in the Name of the Clerk, to His Grace, begging that such a Benefice, in His Grace's Gift, now vacant, might be granted to the Petitioner, and he be, by Law, admitted to it. The Archbishop subscrib'd, *Fiat Institutio*, W. C. and by Virtue of this the Vicar-General instituted him.

And 'tis to be observ'd, that in Law, the Acts of these Substitutes are taken for the Acts of those who substitute them: and if these Chancellors do commit any Irregularity in instituting, the Bishop, whom they represent, is answerable for their Fault.

Before the Clerk is instituted he must subscribe the 39 *Articles of Religion*; and this Subscription must be made in presence of the Ordinary, that is, the Person who institutes. The Ordinary is not bound to offer the Articles to be subscrib'd, but the Clerk is himself to offer to subscribe them; and he must subscribe without any Reserve, Exception, or Qualification; and if he do not before Institution subscribe

80 *The Clergyman's Vade-Mecum.*

them in this manner, his Institution is *ipso facto* void and null; the Church still remains void, by *Stat. 13 Eliz. cap. 12.*

At the same time, the Ordinary requires the Clerk to subscribe the other two Articles mention'd *Can. 36. viz.* the King's Supremacy, and the Lawfulness and Use of the *Liturgy.*

Farther, the Clerk before his Institution, shall subscribe to that Part of the Declaration enjoin'd by the *Act of Uniformity, 14 Car. II. c. 4. viz.* *I will conform to the Liturgy of the Church of England, as it is by Law establish'd:* The former part of the Declaration requir'd by that Act is set aside, by *Stat. 1 W. & M. c. 8.* and the latter was requir'd to be subscrib'd no longer than our *Lady-Day, 1682.*

The Clerk, before Institution, must likewise take the Oaths mention'd in *Stat. 1 W. & M. c. 8.* instead of the former *Oaths of Allegiance and Supremacy,* requir'd by *Stat. 1 Eliz. c. 1.*

And then follows the Oath against *Simony,* enjoin'd by the 40th Canon. *Dr. Watson* would have it thought, that this Oath is abrogated by *13 Car. II. c. 12.* whereby 'tis provided, That no Oath shall be administred by any Judge Ecclesiastical, whereby the Party shall be *compell'd to confess, accuse, or purge himself of any Criminal Matter:* but it might with as good Reason have been inferr'd, that the *Oaths of Allegiance and Supremacy* were thereby abrogated; for the Clerk is no more oblig'd to accuse or purge himself of *Simony* by the one, than of *Rebellion or Popery,* by the other.

And the Oath of *Canonical Obedience* is now likewise administred to the Clergyman, before
his

his Institution; and he has Certificates given him of his subscribing the Declaration contain'd in the *Act of Uniformity* in *English*, and in a distinct Instrument under the Hand and Seal of the Bishop; and of his other Subscriptions and Oaths in *Latin*, after he has first been instituted, by kneeling down before the Ordinary, whilst he pronounces the Words of Institution out of a written Instrument, drawn beforehand for this Purpose, with the Seal *Episcopal* Appendant, which the Clerk, during the Ceremony, is to hold in his Hand.

The Clergyman ought by all means to have some Witnesses of his Institution, taking the Oaths, and making Subscriptions; and none more proper than the Bishop's Servants. He ought therefore to ask the Names of those who are present, and write them down among his *Memorandums* of Note, or desire them to write their Names on the backside of the Instruments.

Lastly, You are to receive from the Ordinary a written Mandate to the Archdeacon, or other proper Person to induct you.

By Institution, the Church is full against all persons but the King; that is, no other Patron, or pretended Patron, can oblige the Bishop to institute another Clerk, till he that was first instituted be by course of Law removed.

The Clerk, by Institution, has the Cure of souls committed to him, and is answerable for any Neglect in this Point.

Also, He that is instituted only, may enter upon the Glebe, and take the *Tythes*, but cannot Let, Grant, or Sue for them.

INDUCTION.

The Clerk, upon exhibiting his Mandate to the Archdeacon, or other Person, to whom it is directed, has a Right to be Inducted by him; and in case he refuse to grant him Induction, there is Remedy against him in the *Ecclesiastical Court*: as, if he be an Archdeacon in the Bishop's Consistory, where he shall be forc'd to do his Duty, if he cannot shew lawful Cause of his Refusal; or an Action of the Case may be brought against him at Common Law, by which Damages may be recover'd for his Refusal, or Delay: but there is no way of obliging him to grant Induction, but by the Ecclesiastical Law. *Watf. c. 30. p. 230.*

If the Inductor, or Person to be Inducted, be kept out of the Church, or Parsonage-House by Laymen, the Writ *de Vi Laica* lies for the Clerk, which is directed out of Chancery, to the Sheriff of the County, to remove by Force, and, if need be, to arrest and imprison the Persons who make Resistance.

If any other Clergyman, presented by the same Patron with the Person to be Inducted, keep Possession, then a *Spoliation* is grantable out of the *Spiritual Court*, whereby the Tythes, &c. shall be sequestred, till the Right be determin'd.

The Archdeacon does rarely in Person Induct a Clerk, but issues out his Warrant to all Clerks and letter'd Persons within the Archdeaconry, empow'ring them, or any of them, to do it in his stead; and tho' it be perform'd by one that is

not

not of the Archdeaconry, yet it has been judg'd good; but it is disputed, whether Induction made by any other Person's Warrant, besides his who of Custom uses to grant it within such a Jurisdiction, be not void. *Watf. c. 19. p. 109, 110.*

If the Bishop who gave the Mandate for Induction to the Archdeacon, die, or be remov'd before Induction be had, it has been adjudg'd, that the Induction made afterward, by virtue of that Mandate, is null: but *Quare*. However, 'tis certain, that a Clerk that has receiv'd Collation, and Mandate for Induction from a Bishop, to a Living of his own Gift, loses the Benefit of both, if the Bishop die before the Clerk be actually Inducted. See *Chap. of the King's Supremacy*.

N.B. During the time that the Bishop's *Inhibition* continues, (which is about three Months before his *Triennial Visitation*, and as many after; or however, six Months in the whole) the Bishop does not only grant *Institution*, but *Induction* too; for, by the *Inhibition*, the Archdeacon's Power is suspended *pro tempore*; and during the *Inhibition* of the *Metropolitan*, which continues the same space of time upon his *Visitation* of any Diocese in his Province, the Presentation must be made to him, or his *Vicar-General*; nay, if the Bishop of the visited Diocese have a Benefice fall in his Gift, he cannot collate his Clerk, during the time of *Inhibition*, but must present him to the *Metropolitan*, as other Patrons do, and the *Metropolitan*, or his *Vicar-General*, are to grant or refuse *Institution* and *Induction*.

84 *The Clergyman's Vade-Mecum.*

Induction is commonly perform'd by some neighbouring Clergyman, who, taking the Hand of the Person to be Inducted, lays it on the Key of the Church, which is then in the Door, and says, 'By virtue of this Instrument (meaning the Archdeacon's, or other Ordinary or Visitor's Warrant, which he holds in his Hand, or puts it into the Handle of the Key) 'I Induct you 'into the Real, Actual, and Corporal Possession 'of the Rectory or Vicarage of *N.* with all its 'Fruits, Profits, Members and Appurtenances' Which said, he opens the Door, and puts the Rector in possession of the Church, and shuts the Door upon him; who, after he has toll'd a Bell, if there be any belonging to the Church, comes out, and desires the Clergyman who Inducted him, to endorse a Certificate of his Induction on the Archdeacon's Warrant, and all that were present, to testify it under their Hands.

But the Clerk needs not be solicitous concerning the Ceremony or Formality of the Induction. If the Church-Key cannot be had, 'tis sufficient that the Clerk take hold of the Ringle of the Door. If the Church be ruined, 'tis enough to lay the Hand on the Wall; or if there be no Wall, on the Fence of the Churchyard; and in case the Church-Key cannot be had, it has been held sufficient, that the Clerk did, within the Time limited, read the *Common-Prayer* and 39 *Articles* in the Church-Porch. *Watsf. c. 15. p. 112.* only 'tis fit that the Induction be as publick as may be; that so the *Parishioners*, and all that have, or may pretend a Right to the *Patronage*, (who are to take notice of it at their peril) may have no reason to say, that it was done clandestinely;

stinely; therefore the Tolling of the Bell is no insignificant Ceremony.

The Incumbent, where there is a Parochial Library, must give Security to the Ordinary, that the Books shall not be lost, before he can be admitted to the use of the said Library. *Stat. 7 Ann. c. 14.*

Of reading the Liturgy and Articles, and making Declarations in the Church.

By Induction the Clerk is compleat Incumbent, and has a Right *ad Beneficium*; as by Institution he had Right *ad Officium*: and that he may retain both, he must strictly observe the Directions of certain Statutes as follow, *viz.*

By Statute 13 *Eliz.* 12. within two Months after Induction he must read the 39 *Articles of Religion*, agreed upon in *Convocation, A. D.* 1562. and must declare his unfeigned Assent, and Consent thereto in *Common-Prayer Time*; that is, after it is begun, and before it is ended.

By Statute 14 *Car. II. c. 4.* he must, within two Months after he is Inducted, upon some *Sunday*, read the Book of *Common-Prayer*; that is, *The whole Service of the Church appointed for that Day, both for the Morning and Evening, and likewise declare his Assent and Consent to the same.* In the Church to which he is Inducted, before the Congregation, after having read the same in the Form of Words appointed by the said Statute, *viz. I do declare my unfeigned Assent and Consent to all, and every thing contained and prescribed, &c.*

And

And by the same Act he is likewise obliged to read the *English* Certificate, under the Hand and Seal of the Bishop, and to make the Declaration in the face of the Congregation, as the Bishop certifies he did before him, viz. *I will conform to the Liturgy of the Church of England, as it is now by Law establish'd.*

'Tis true, this last Particular is not requir'd by the Act to be done so soon as the two former; 'tis sufficient, if done within three Months after Subscription; but 'tis most common to make one Work of all, and to read the Certificate, and make that Declaration on the same Sunday that the *Articles*, &c. are read.

And the Clergyman ought to have two or three Witnesses to read the *Liturgy*, *Articles*, and *Declarations* along with him, who may be able to swear, upon occasion, that he did perform all Things, as by Law requir'd. And in the mean time, let them attest it under their Hands, in some such Form of Words as you will see in the *Appendix*, No. 2.

'Tis true, there are several Cases reported, *Wats. c. 15. p. 120.* whereby it does appear, that 'tis sufficient for the Clerk, when he sues for Tythes or Dilapidations, to prove his Institution and Induction; and that the Law does presume, that the Clerk who is Instituted and Inducted, has read the *Articles*, &c. and that the Defendant shall be put to prove that he did not. Nay, we are told, that in case a Clergyman have for several Years been in Possession, he shall not be oblig'd, at Common Law, to prove his Institution and Induction; (tho' how many Years shall excuse him from the proof of it, does

does not appear ; Ten or Twenty Years, or any considerable Time, says Sir S. Degg, p. 57.) *Watf. c. 58. p. 521.* However, it is advisable that he so order Matters, that he may be able to prove all Particulars : For, *abundans cautela non nocet.*

It seems that all Ecclesiastical Persons, within three Months after their taking any Benefice, by *Stat. 13 of W. III. c. 6.* and *1 Ann. c. 22.* are to take the Oath commonly called the *Abjuration Oath* ; and as it now stands alter'd by the *Aët 6 Annæ c. 7.* and *G. I. c. 13.* in the Court of *Chancery, King's-Bench, Common Pleas, or Exchequer,* or else at the *Quarter Sessions* where they reside.

Of the TEST.

Some Clergymen are made, I know not how, to believe that they are oblig'd to take the *Test* enjoyn'd by *Stat. 25. Car. II. c. 2.* and, in order to that, to receive the Sacrament in some neighbouring Parish Church, on some *Sunday* soon after their Induction ; but it does not appear that the Office of an Incumbent is either a *Civil* or a *Military Office*, or ever was deem'd so by Law ; and no other *Officers* are bound by that, or any other Aët, to take the *Test*. Nor have any Judges, or noted Lawyers, given their Judgment, that Clergymen are included, or intended by the Words of it ; neither hath *Godolphin* or *Watson*, who have written largely on the Legal Rights, Duties, and Obligations of Clergymen, given the least Hint that they are bound to take the *Test* : Only Sir S. Degg rais'd a
Quære

Quære upon this Matter, without giving a Reason for it, *Parf. Counf. p. 60.* and some have taken his Doubt for a positive Determination. But I have been inform'd, that some of our Learned and Reverend Judges have repell'd Clergymen when they have offer'd themselves in *Westminster-Hall*, to take the *Test* on the account of their Spiritual Livings.

Bishops and dignify'd Clergymen do indeed generally take it, and they may have more reason to do so, than Parsons and Vicars: For they have a sort of Civil Authority annex'd to their Spiritualities; I mean, the Probate of Wills, licensing Chirurgeons, keeping Temporal Courts, &c. But this Consideration doth not reach private Incumbents; or if any Incumbent of a Parsonage, or Vicarage be oblig'd to take the *Test*, 'tis only he who is presented by the *Crown*, and yet the Words of the Act, which are suppos'd by some, whom I have discours'd on this Subject, to affect such Incumbents, are only these, *viz. They who receive any Salary or Wages, by any Grant from the King, or shall have Command or Place of Trust from, or under him.*

The Method of taking Institution and Induction to a Vicarage, is the same with that by which a Clerk obtains a Rectory; only the Vicar takes an *Oath of perpetual Residence*, over and above all that which is done by a Rector; and without taking this Oath, his Institution is null and void, by the Constitution of *Ordo ad Vicarium*.

C O L L A T I O N.

There is no manner of difference between Institution and Collation, as to the Action itself, but this, that the Bishop does not present to such Livings as are in his own Gift, but immediately institutes his Clerk, in much the same Form as he or his Chancellor institute a Clerk presented by any other Patron: And as the Bishop collates to Benefices of his own Gift, *Jure pleno*, so he does to those which fall to him by Lapse, by reason that a fit Clerk was not presented by the Lay-Patron in six Months time. If the Archbishop do not collate in six Months, to a Benefice of his own Gift, it lapses to the King; if the Bishop, it lapses at the end of the first six Months, to the Archbishop; in six Months more, to the King, *Watf. c. 12. p. 76.*

And the Effects of Collation are the same with those of Institution, in case the Bishop's Title were good: but Possession, by Virtue of Collation from the Bishop, or other Ordinary, will not make a Man a Legal Usurper, if the Benefice be in the Gift of a Lay-Patron, or the King; but an Usurpation by the Ordinary may, in some Cases, hold against the Metropolitan, or other Collator. See *Watf. c. 12.* But Collation to a Benefice, when the Right is in the King, or Layman, does not fill the Church against them; but the Bishop is bound to admit their Clerk, when presented: but till that can be done, the Clerk that was collated is Incumbent, as to all Ecclesiastical Matters, and shall receive Tythes, Offerings, &c.

If

If a Bishop collate to a Benefice laps'd to the King, tho' his Clerk die in Possession of it, yet the King may have the next Turn. *Watf. c. 12. p. 79.* This is true of a Living that was originally Collative, but if it were *Presentative* it seems to be otherwise.

D O N A T I O N.

The King, or other Lay-Patron, does, without Presentation or Institution, in some Places, by antient Right or Custom, put the Clerk into the Possession of his Benefice: Yet, in this Case, the Clerk is bound to subscribe the Declarations, and take the Oath enjoin'd by 14 C. II. and 1 W. and M. the first before the Bishop or Archbishop, within whose Diocese the Donative lies, from whom he must also receive a Certificate of his Subscription; and the other before the Patron, says *Watson c. 15. p. 123.* who was himself the Incumbent of a Donative, viz. the Deanery of *Battel*. And if it be a Benefice with Cure, he is also bound to subscribe the 39 Articles before the said Bishop or Archbishop, and to read the Common-Prayer, and make this Declaration, as other Incumbents do.

If once a Patron present to a Donative Church, that Church shall always remain *Presentative*: but if any other Person present to such a Church, the Presentation is merely void, and therefore Usurpation cannot be practised on them, tho' they be in the Gift of common Patrons, *c. 15. Watf.*

A Donative, while it remains so, shall not be subject to Lapse, either to Ordinary or King; but

but the Patron may be oblig'd, by Ecclesiastical Censures, (says *Watson*, c. 12. p. 21.) to fill the Church. And if it once be made *Presentative* by the Act of the Patron, then it also becomes subject to Lapse. And yet, if we may believe *Watson*, shall not be visitable by the Bishop, but by the King and Patron only, c. 12, 71, &c.

Bishopricks are (by many) said to have been Donatives from the Conquest, to the Reign of King *John*; but I take this to be an Error: 'Tis true, our *Norman* Kings did invest Bishops in their *Baronies*, *per Traditionem annuli & baculi*: But, I suppose, no one will from hence infer that Bishops were not install'd in their Cathedrals, according to the Forms then prevailing, or that they did not take the Oath of Canonical Obedience to their Metropolitan, or were not visited by them. He that will say this, may easily be disprov'd.

Dr. Watson would have it, that all the *Deaneries* of the New Foundation, and the *Prebends* of *Westminster*, are Donatives: because they come to their Preferment by the King's Letter, without Institution. But I suppose, this cannot be said of Cathedral Deans, tho' they do not come in by Institution, because they are all, in some measure, subject to the Bishop's Visitation.

S I N E C U R E S.

No Church, where there is but one Incumbent, is properly a *Sine-cure*; if indeed the Church be fall'n down, or the Parish becomes destitute of Parishioners, without which Divine Offices can.

cannot be perform'd, the Incumbent is of Necessity acquitted from all Publick Duty, but still he is under an Obligation of doing this Duty, whenever there shall be a competent number of Inhabitants, and the Church be Rebuilt; and, in the interim, if the Church be *Presentative* or *Collative*, as most such Churches are, the Incumbent is instituted *ad curam animarum*: And these Benefices are more properly *Depopulations* than *Sine-cures*. And therefore, all that has been said of other Benefices is applicable to them; and 'twill be necessary for the New Incumbent to read the *Liturgy* and *Articles* in the Churchyard, if there be no Church.

The Constitution of *Stephen Langton* Archbishop of *Canterbury*, *Quia juxta*, mentions some Churches that had several Rectors; others that had several perpetual Vicars Incumbent on them at the same time; and *Dr. Watson*, c. 2. p. 4. tells us, there are still some Churches that have two Incumbents, each of which have the entire Cure of the Parish: but, for the most part, where there are now two Incumbents, the one is a Rector, the other a Vicar; and tho' both are instituted equally, *ad curam animarum*; and tho' the Common Law say, that wherever there is such Institution, this is an undeniable Evidence of the Cure of Souls, *Watsf. c. 2. p. 6.* yet 'tis certain, that the Generality of these Rectors are not by Law oblig'd to any Duty; but the whole Care of the Parish is thrown upon the Vicar: And the Rectories of these Parishes are those which are commonly call'd *Sine-cures*.

Lyndwood says, and proves, that by the Canon-Law such Rectors are oblig'd to Residence, tho' they have Vicars under them, *Lib. 3. t. 4. c. 3. ver. nec habent vicarios.*

If such Rectories are conferr'd by Donation, without any Institution, as some of them are, they may strictly be call'd *Sine-cures*; but they who by Institution have taken on themselves the Care of Peoples Souls, will be hard put to it to prove, that their Benefices are *Sine-cures*. The Lawyers say, that in this case, the Rector has the Cure of Souls, *Habitualiter*; the Vicar, *Actualiter*.

Bishopricks, Deanries, and Archdeaconries, were of old generally said to have the Cure of souls belonging to them; some have said the same of Prebends, but with less reason. Bishops have the Cure of their whole Dioceses, and Archdeacons do, in many Particulars, share with them in their Spiritual Cares. The Dean was said to have the Care of his Canons, and of the rest belonging to the *Chaire*; who were all, in old Time to make their Confessions to him, and receive Absolution from him, *Vide Prov. L. 5. c. 16. Gloss.* But it does not appear, that the Canons, or Prebendaries, have or had Cure of souls, in this or any other respect. They are, indeed, for the most part, instituted, but not *Curam animarum*.

Nor indeed are Deanries and Archdeaconries, Benefices with Cure, according to our Statute-Law, since the 21 *Hen. VIII. c. 13.* and therefore none of them are bound to read, or subscribe the 39 *Articles*, by 13 *Eliz. 12.* nor any incumbents of those Churches which have Vicars

cars endow'd belonging to them, and in this only Institution to *Sine-cures*, differs from Institution to other Benefices.

C U R A C I E S.

In a large sense, all Benefices with *Cure of Souls* were call'd Cures; and the officiating Clergyman, whether Incumbent or Substitute, is in the Liturgy and Canons often call'd a *Curate*; but vulgarly he is call'd a *Curate*, who represents the Incumbent, and officiates in his stead: His Office or Benefice (for so his Salary or Quota settled on him by the Incumbent or Bishop, is sometimes call'd) is stil'd a *Curacy*.

It concerns Curates to take License from the Bishop himself, not from his Chancellor or other Ordinary; for all Licenses granted by any other but the Bishop, are voidable, if not void. *Still, Eccl. Cases, p. 160.*

If the Bishop assign the Salary, the Curate's most effectual Remedy for his Pay, is, to apply himself to the *Ecclesiastical Court*; for there, in default of Payment, a Sequestration may be serv'd on the Benefice; but if the Curate have no License, he cannot sue in that Court.

However, if he be oblig'd to sue for his Salary at Common Law, where 'tis sufficient to prove an Agreement betwixt himself and the Incumbent, yet he may be call'd upon to prove that he subscribed and declared before his Archbishop or Bishop, according to the *Act of Uniformity*: For not only Lecturers, but *all that do preach any Sermon on any Day of the Week*, are bound to make their Subscriptions and De-
clara.

arations as that Act requires, under pain of
losing their Places, and being imprison'd three
months without Bail.

He who is Curate to a *Pluralist* in that Bene-
fice from which the Incumbent is for the most
part absent, has the Privilege of Leasing that
benefice reserv'd to him only, by 13 *Eliz. c. 20.*
but he forfeits his Lease, if he absent forty Days
from his Cure.

Dr. *Watson* will not allow, that a benefic'd
clergyman can serve his own Church, and at the
same time be Curate to another; or, which is
the same thing, that any one can serve two
Cures in Person, except he be able to read Prayers
both Morning and Evening in each Church; and
moreover, to preach a Sermon in the Morning
every Sunday, or at least to read a Homily in
each Church: but there is one Law which will,
I think, answer all his Arguments; I mean that
great Law of Necessity: For one quarter (I had
almost said half) of the Churches in *England*,
are not of themselves sufficient to maintain
their proper Curate, or Minister; and such
Churches must be serv'd by halves, or not at all:
and the 48th Canon, empowers the Bishop to
allow of this in case the Church be poor.

These Curates may be plac'd and displac'd
at the Bishop's Discretion, without any Pro-
cess at Law.

PERPETUAL CURATES.

But there are many Churches in *England*, all
the *Tithes* and *Profits* whereof are impropriated,
and no Vicarage endow'd. The Impropriators
were

were oblig'd to maintain Curates for performing Divine Offices. While these Impropropriations were in the Hands of Monks, and other Ecclesiastical Persons, and Bodies, the Bishop had Power to ascertain, increase or lessen the Salaries of these Curates, as well as others: nay, he had a farther Power of augmenting Vicarages endow'd, if he saw occasion*; nor is there any reason to doubt, but he has the same Power still. See *Watf. p. 140, 305. and Kennet of Impropropriations.*

But since those Impropropriations are fallen into the Hands of great Laymen, Bishops have been over-aw'd in this Matter: So that now, in effect, the Impropropriations have these Cures serv'd, by whom, and at what Rates they please.

But those Curates are also licensed by the Bishop, and I am assur'd, that they run in the same Form, at least in many Places, with the Licenses of other Curates, and particularly, *ad nostrum duntaxat Beneplacitum duratura*; and yet, for distinction's sake, these are call'd *Perpetual Curates*; and indeed, whatever Power the Bishops have in removing such Curates at Pleasure, yet 'tis seldom or never made use of.

And

* *Archbishop Chicheley, to render the Procurement of an Augmentation more easy to the Vicar, made a Constitution in Convocation, 1439. whereby all Judges, and Officers Ecclesiastical, are obliged to act in behalf of the Vicar gratis, and without delay, in a summary Manner; and to take care that every Vicar have at least twelve Marks (a great Sum in those Days) assign'd him for his Portion, if the whole Benefice be worth so much.*

And by an Act of the last Parliament, this Power is declared to be in the Bishop; so that when any Incumbent nominates a Curate to him, or if it appear to the Bishop, that any Curate has not a sufficient Salary, the Bishop may, under Hand and Seal, appoint his Stipend, and the times of paying it. The Stipend is not to exceed 50*l. per Annum*, nor to be less than 20. The Bishop may also determine any Difference between Incumbent and Curate, in a summary way: And may, upon the Incumbent's refusing to pay the Stipend, sequester the Benefice, till Payment be made. The Act does not seem to touch Impropriators, nor such Incumbents as reside on their Benefices, tho' they serve their Cures by others.

Many Curates and Vicars, especially in those Benefices which are impropriated by Churchmen, have had good Augmentations made by the Favour of the Impropriators since the Restoration; and these Augmentations are secur'd to them and their Successors, by *Stat. 29 Car. II. c. 8.* and these Vicars and Curates are by that Act declar'd *to be in the actual Possession* of these Augmentations. Now, since these Curates have Right by Statute to these Salaries, it should seem that they cannot justly be depriv'd of them, but by due Form of Law, as other Incumbents may; for by this Statute, these Curates are made proper Ecclesiastical Benefices; but this Statute reaches no Augmentations, but those made since the first of *June A. D. 1660.* and all future Augmentations *not exceeding one moiety of the clear yearly Value of the Rectories of which they are granted.*

Some of these Curates have certain Portions of Tythes settled on them, which are now likewise by this Act, made their Property; but before this Act, paying their Tythes to the Curate, was no Discharge against the Impropriator: For *the Curate cannot prescribe against his Master*, as the Law-Books express it. *Godol. cap. 32. Sect. 56.*

Any Curate or Incumbent, where there is a Parochial Library, must, within six Months after his Admission, give a List of the Books, to the proper Ordinary, and acknowledge the Possession of the Books under Hand. *Stat. 7 Ann. c. 14.*

C H A P. X.

Of Pluralities and Dispensations.

THE *Popish* Canon Law forbid any Clergyman to hold more Dignities, or Benefices, with Cure, than one, at the same time; yet not with an Intent to hinder, or take away this Practice, but to oblige the *Pluralist* to let the *Pope* share with him in his Profits; for the Clerk was allow'd to hold as many Dignities, or Benefices as he could get, with the *Pope's* Dispensation, which was easily had from his *Legate* or *Nuncio*, residing here, if Money were not wanting.

Both by that Law, and our present Statute-Law, Prebends and Rectories, where there is a Vicar endow'd, were, and are reputed *Compatible*

He Benefices; that is, he who has one, or more of them, and also one Benefice with Cure, needed no Dispensation; only a Prebendary * if he were by the Statutes of his Church, strictly obliged to perpetual Residence, was not by the Canon-Law permitted to hold any Benefice with Cure, without a Dispensation. See *Prov. L. 3. T. 5. Audivistis, in Gloss.*

And now, by *Stat. 21 Hen. VIII. c. 13.* not only Prebends and Rectories, with Vicarages endow'd, but Deanries and Archdeaconries, are declared to be *Benefices without Cure*; so that whatever they were formerly, they also are now *Compatible*.

But, by the aforesaid Statute, no Clergyman can hold two Benefices with Cure, if the first to which he was Instituted, Collated, or otherwise Possessed of, be worth 8*l.* or more, without Dispensation from the Archbishop of *Canterbury*, confirm'd by the King's Broad Seal in *Chancery*; and he that without Dispensation takes a second, *ipso facto* voids the first.

The Valuation here meant, is generally taken to be that of the King's Books; so it was adjudged in the Reigns of King *Charles I.* and *II.* *B. G.'s Code, p. 945.* However, one would think that the first Living must be such a one as was

F 2

worth

* *For 'tis to be noted, That some Prebendaries were, by their local Statutes, tied to such precise Residence, that if at any time they had leave to be absent for some Days, they were obliged to leave a Substitute in their Place. Ad Gloss on the Word Pluralitatem in Constitut. Orthobon. Christian.*

worth 8*l.* in *Hen. VIII's* Time; and this will include all Livings that are not now worth more than 50*l. per Ann.* for the Value of Money is sunk, at least six parts in seven, since the Reign when this A*ct* was made.

This Dispensation must be taken, and confirmed by *Royal Authority*, before the Clerk be Instituted to his Second Benefice; for if it come afterwards, it cannot restore him to his first Living, which was, *ipso facto*, voided by his taking Institution to a second, without Dispensation.

The A*ct* indeed does not make void the first Benefice, till not only *Institution*, but *Induction* be taken to a second: but here all do unanimously depart from the Letter of the Law, and there is indeed good Reason for it: because if it were otherwise, the A*ct* might be eluded; for if a Clerk be presented, and instituted to a Benefice, the Church is thereby full without Induction, and so he might hold two Benefices without Qualification or Dispensation; but yet this is the only Case I know, in which Reason takes place of the express Words of the Statute. 'Tis indeed pretended by some, that the first Benefice is here voided, upon Institution, by the Canon-Law; how true this is, you may see in the beginning of the next Chapter. Indeed, neither Institution, nor Induction to a second Living, does by that Law make the first Living void, *de facto*.

Dispensations have sometimes been granted to hold any two Benefices, *cum clausula mutationis*; he that has such a Dispensation, may take a third Living without a New Dispensation, and resign which of the two former he pleases, before
he

he is instituted to the third ; or if he do not resign either of them, shall only forfeit the first ; but if the Dispensation be for two Benefices certain (as is most common) both are forfeited, if a third Benefice be taken without a new Dispensation. See *Watf. c. 3. p. 14.* And such a Dispensation cannot be taken, till the Clerk certainly knows what those Benefices are, which he is to hold by his Dispensation : And this cannot be known, till he be actually in possession of one, and have the Promise from the Ordinary of being instituted to the other ; or, however, not before the Ordinary has accepted his Presentations to both ; or, if the second be a Donative with Cure, till the Patron has given the Clerk assurance of his Donation. But no such Clauses are now ever permitted to be inserted into Dispenfations.

But there are certain Qualifications necessary, besides Holy Orders, to entitle a Man to such Dispensation ; for he must be either the Legitimate Son, or Brother of some Temporal Lord, or Knight, (the Sons, or Brothers of Barons, could not be intended by this Act ; for this Honour was afterwards erected by King *James I.*) or else Batchelor, or Doctor in Divinity or Law, (not by Grace,) or a Suffragan Bishop, or else retain'd as a Domestick Chaplain, by some Peer, or other great Officer of the Realm, or by some Widow-Dowager of a Temporal Peer.

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The Number of Chaplains which every Peer or other Person may qualify, is as follows, 21 *Hen. VIII. c. 13.*

<i>Archbishop</i>	8	<i>Marquis, or Earl</i>	5
<i>Bishop</i>	6	<i>Baron</i>	3
<i>Viscount</i>	4	<i>Knight of the Garter</i>	3
<i>L. Chancel. or Keeper</i>	3	<i>Treasurer, or Comptrol.</i>	
<i>Dowager of any Peer</i>	2	<i>ler of the K's Housh.</i>	2
<i>King's Secretary</i>	2	<i>Lord Almoner</i>	2
<i>Dean of the Chapel</i>	2	<i>Master of the Rolls</i>	2
<i>L. Chief Justice of the</i>		<i>Warden of the Cinque.</i>	
<i>King's-Bench</i>	1	<i>Ports.</i>	1
<i>Duke</i>	6		

It is provided by this Act, that no Chaplain shall have the Benefit of it, but he that shall exhibit a Letter testifying whose Chaplain he is, under the Sign and Seal of the King, or other his Lord and Master.

A Temporal Peer, tho' a Minor, may qualify, by setting Hand and Seal; but if the Testimonial be sign'd before the Noble Person were actually a Peer, tho' he were of Age, yet 'tis not good, except renew'd, after he become Peer. *Watf. c. 3. p. 9, 11.*

A double Capacity in one and the same Person to qualify Chaplains, does but enable him to qualify Chaplains in his best Capacity only. So if an Earl be Lord Chancellor, he shall not qualify Eight, viz. Five as Earl, and Three as Chancellor, but Five only as Earl. *Godol. c. 26. §. 4.*

If a Baron, who is allow'd but Three Chaplains, qualify Six, and all Six are prefer'd to fix several Pluralities, the Three that are first promoted

moted to Pluralities, are only warranted by the Statute, say some; but there are Precedents to the contrary, *viz.* that they who were first retain'd, are only warranted. *Watf. c. 3. p. 10.* But if a Baron retain Four at the same time, that is, I suppose, if their Testimonials bear equal Date, none of them are qualify'd.

If the Nobleman die, or the great Officer be removed, or the Chaplain be dismiss'd upon displeasure, before he be promoted to a Plurality, his Qualification is void; but if he be preferr'd before any such Accident, he may hold his Plurality for Life, but cannot take another Plurality, without a new Qualification.

If a Nobleman, or other Patron be attainted, his Qualification ceases, as if he were dead.

Dowagers of Temporal Peers retain this Privilege of qualifying two Chaplains each, tho' they do afterwards marry with other Persons of a lower Degree, by the express Words of the Act; but it is otherwise, if the Husbands discharge these Chaplains before they are preferr'd. *Watf. ibid.*

As the Chaplains of any of these great Persons die, others may be retain'd in their stead; but the Testimonial must be sign'd after the Death of those of the first Number. For 'tis a Rule, That the Person retaining must be capable to retain at the time when he signs and seals the Qualification. *Ibid.*

But the Chaplains of the King, his Brethren, Sisters, Uncles or Aunts, are likewise qualify'd by this Act to retain two Benefices; and those Royal Persons are stinted to no number of Chaplains, but may retain as many as they please.

One of the Privy-Council may purchase Dispensation to hold three Benefices: and a Clergyman that is Chaplain to the King, may accept of the King's Gift, *any Benefices, to what number soever, without incurring the Penalties of that Act*: And it does not appear that any Dispensation is requir'd in this last Case.

The 41st Canon does require, that none shall have a Plurality under the Degree of Master of Arts, and that the two Benefices shall not be more than 30 Miles distant from each other; and Archbishops are generally very strict in these two Particulars.

A Presentation made by the University, of a *Papist's* Living is utterly void, if the Clerk presented have then any other Benefice with Cure. 3 *Jac.* 5. & 1 *W. & M.* c. 26.

He who takes two Benefices, with Cure, whereof the first, or both, are under 8*l.* *per An.* is not subject to the Penalties of 21 *Hen.* VIII. abovemention'd; but yet is liable to lose one, or both of them, without Dispensation; not by the Statute, but by the Canon Law: For the Constitution of the *Lateran* Council against *Pluralities* is a general Law, and is said to be as forcible as an Act of Parliament. *Watf.* c. 2. p. 2. And by this Constitution, he who had taken Institution to more Benefices than one, is adjudg'd, *de Jure*, to have lost all but the last; and in case he be obstinate, and endeavour to stand it out, he shall be depriv'd of that too. See *Const.* of Archb. *Peckham*, *Prov. L.* 3. T. 6. and indeed, by the Canon-Law, no one could hold two *Simple Benefices*: that is, *Benefices without Cure*, without Dispensation; only in
this

this Case the Bishop's Dispensation was sufficient: And if the Benefices were in two Dioceses, the Dispensation of both Bishops was necessary. Now, two such Benefices, or more, are often held without any Dispensation at all, but by what Right I know not. 'Tis true, he that has more than one Benefice of this Sort, viz. two Prebends in several Churches, is declared not to be within reach of the *Stat. 21 H. VIII.* but that Statute does not set aside the Canon-Law, as to this Matter, no more than it does to Benefices with Cure under 8*l.* per Ann. Value. See *Prov. L. 3. T. 5. C. 2. ver. Dispensatione:* and Bp. *Stilling. Eccl. Cases, p. 225.* And indeed, 'tis in itself more contrary to Primitive Practice, and to the old Canon-Law, to have two Benefices of any sort in two several Dioceses, than to have more than two in the same Diocese. For, as while the Bishop and Clergy liv'd together a Body, no one could be a Presbyter to two Bishops at once; so the old Canon-Law expressly provided that no Clergyman should have two Titles, that is, belong to two Dioceses or *Bishops.* See *Still. ubi supra.*

'Tis commonly said, that a Dispensation to hold two Benefices, whereof the first, or both are under Value, comes too late after Institution. *Watf. ib. p. 3.* but *Quære:* For the taking a second Living does not, by the Canon-Law, vacate the first *de facto*; but tis full, till the Patron present, or the Bishop declare it void: And therefore tho' the Dispensation come after the Church is full, it seems that it may be of force. See *Chap. XI.*

However, no Qualification requir'd by the Statute 21 *H. VIII. viz.* of Birth, or Chaplainship is necessary in this Case: For that is only necessary, when the first Benefice is more than 8*l. per Ann.* But all Pluralists must be Masters of Arts, &c. by *Can. 41.*

For ought that appears to the contrary, the Archbishop may dispense with a Clerk, to hold more than two such Benefices: For the Statute only forbids the taking more than two, when the first is above 8*l.* and, before that Statute, the Clerk might, by Dispensation, hold any Benefices, to any Number. *Anthony Harmer* says, that *Apb. Parker* granted Dispensations to hold three Benefices. *p. 66.*

Some have thought, that the Archbishop's Faculty alone, without the Royal Confirmation, is a sufficient Dispensation, when the first Benefice, or both are under Value: but our Archbishops before the Reformation, were not more forward to enlarge their Power, than they since the Reformation have been modest and sparing in the use of it. For 'tis certain, no Faculties for Plurality are now granted, but with an express Proviso, that *they shall be void, without a Confirmation under the Broad Seal.* Nay, I am assured that no Archiepiscopal Dispensation, of any Sort, is now granted, but with this Proviso.

If the Bishop, or in the Vacancy of the See, the Guardians of the Spiritualities refuse to grant this, or any other Dispensation, I find no Remedy the Clerk has, but that mention'd in *Stat. 25 H. VIII. 21.* which is, that the King in Chancery may be apply'd to; and that if, upon Sum-

Summons to the Archbishop to shew Cause why he does not grant the Dispensation, he either shew no Cause, or not a good one, a Commission may be granted to two Bishops, nominated by the King, under the Broad Seal, authorizing them to grant such Faculty or Dispensation. A Remedy too difficult and costly for any private Clergyman, that has not great Friends, or a long Purse.

But 'tis said, that some Peers, when their Chaplains have been deny'd Dispensations, have found Redress by complaining of the Archbishop to the House of Lords for Breach of Privilege.

There are undeniable Proofs, that the Ordinary, with the consent of the Patrons and Incumbents, could before *Stat. 37 H. VIII. c. 21.* unite two neighbouring Churches; that is, make them as one to the Incumbent, so that he and his Successors might hold both, without Dispensation. Some say, that the King's Consent was necessary, if each Church had sufficient Maintenance; but the *Canonists* deny this. The common Pretence for uniting Churches, was the Poverty of one, or both: But there is good Reason to believe, that Bishops did sometimes unite Churches upon another Account; I mean, to excuse a Friend from the Charge of a Dispensation from the Pope. Sometimes the Pope himself confirmed the Union, and then it was good, notwithstanding any Error committed by the Ordinary; and what Power the Pope had before in this Matter, the King has now. This Act confirms Unions made before that Time,

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Time, by the joint consent of Ordinary, Incumbents, and Patrons.

But this Act does for the future make null and void the Union of Benefices, unless one of the Benefices be under 6*l.* Value by the King's Books, the Churches not above one Mile distant from each other; and except the Mayor, Sheriff, and Commonalty do give their Consent, in case the Benefice lie in a City or Corporation. And if one of the Livings be under 6*l.* Value in the King's Book, yet if within one Year after the Union, the Parishioners do assure the Incumbent to make his Living 8*l.* per Ann. in these Cases, I say, the Union made by Ordinary, Patrons, and Incumbent, is void.

But 'tis said, that all Unions made by Ordinary and Patrons, with Royal Assent, are good, whatever the Value be, *Watf. c. 16. p. 127.* and that either when the Church is void or full. *Quære*, If the Church be full, whether the Incumbent's Consent be not proper? However, 'tis necessary to an Union made by 37 *H. VIII.* And therefore such Union cannot be made during Voidance.

'By Statute 17 *Car. II. c. 3.* any Churches, or Chapels, in Cities or Corporations, may be united by the Bishop, with Consent of the Magistrates, when they are either full or void; if they be full, the Union not to take place till the Voidance of one of the Churches, to which the Incumbent of the other is to succeed; and if the Churches so united exceed the Value of 100*l.* per Ann. the Union is void, unless the Parishioners, under their Hands, consent to the Union.'

Far.

Farther, the Archbishop of *Canterbury* does grant Dispensation *for the Son to succeed*; but the necessity of such Dispensations in any Case except those mention'd in the former *Chapter*, does not appear: Nor have we any Instance of a Clerk, since the Reformation, depriv'd for succeeding his Father without a Dispensation: And indeed the great Occasion of those Canons against the Son's succeeding the Father, is now remov'd; which was to discourage the Marriage of Priests, as any one may see by *Constit. of Ordo. innotuit*. They had indeed another pretence for it; which was, lest Benefices, by degrees, should become Hereditary, and descend from Father to Son. See *Const. of Peckham, A.B. Prov. L. 1. T. 8*. They are certainly mistaken, who suppose that all the Children of Clergymen, in Times of Popery, were Illegitimate, and would have this to be the reason of the Canon. 'If the Son were begotten on a Concubine, then, says *Lyndwood Gloss. ibid.* 'there are two Impediments why he should not succeed, viz. Bastardy, and being the Son of a Priest.' But a Priest might have Children before he entred into any Orders, or while he was in the inferior Orders; that is, while he was *Ostiary, Acolyth, or Exorcist*: For the Subdeacon was charg'd to relinquish his Wife, but those in inferior Orders might retain them; by *Const. of Archb. Wethershed, Prov. L. 3. T. 2. c. Siqui*; and 'tis said, that even Priests were generally married to the Women they kept in those Days. See *Ant. Harmer, p. 79*. And tho' they kept it secret, for fear of Deprivation, sometimes till their Death, yet they often took care that
sufficient

sufficient Evidence of their being married might appear after their Death, when they were out of the reach of this hard Canon-Law. See *Const. of Otho. ubi supra.* And even a married Priest might, by Dispensation from the Bishop, hold a *Sine-cure.* L. 3. T. 2. c. *Siqui Gloss.* Yet we are told, that there are not less than 300 Dispensations of this Sort granted in the Faculty-Office, since King Charles II. Restoration. Bp. G's Code, p. 837.

C H A P. XI.

Of Voidance by Death, Cession, Resignation, Act of Law, or Deprivation.

I. THE first, and most natural Means, whereby a Benefice becomes vacant, is the Death of the Incumbent; and the Patron is oblig'd to take notice of such Voidance at his Peril; and if he do not present within Six Calender Months, 'tis laps'd to the Ordinary.

II. A second Means whereby a Benefice becomes void, is by Cession, and that,

I. By Statute: as when a Clerk having one Benefice of 8l *per Ann.* or upwards, takes a second of any Value whatever, without a Dispensation, the first is *ipso facto* void; and the Patron is not to expect Notice from the Ordinary in this Case, but may present as soon as his former Clerk is instituted to another Benefice: But
the

the Living does not lapse, if the Patron present within Six Months after the former Clerk's Induction. *Watf. c. 2. p. 3.*

2. Cession by Canon-Law is, when a Clerk having one Benefice under 8*l.* *per Ann.* Value, takes a second, of what Value soever, without a Dispensation; for in this Case, the former Living is only void *de Jure*; 'tis not void *de Facto*, as in the former Case: For if such a Clerk sue for Tythes due from his former Benefice, since his taking the second, 'tis no Bar against him, to say that he hath taken a second Benefice. *Watf. c. 2. p. 4.* Such a Person is by the *Constit.* of Archb. Peckham said, *Plura beneficia de facto obtinere*; and, ---- *sit privatus*, let him be deprived. Which had been very improper, had he been thought by the Canon-Law to be *ipso facto* deprived, as by the Statute of *Hen. VIII.* Nay, by the Canon-Law, whatever Clerk endeavoured to possess himself of a Living, which had an Incumbent *de Facto*, tho' not *de Jure*, before this *de Facto* Incumbent were Solemnly and Canonically remov'd by the Ecclesiastical Judge, he incurr'd the *Excommunicatio major*. See *Constit. Archiep. Stratf. Esurientis*.

The Patron may, if he please, present a Clerk to the first Benefice under Value, so soon as his former Clerk is instituted to a second. This I take to be one Instance of a thousand of the Common-Law, or Custom of *England*, prevailing against the Canon-Law; for by this last 'twas otherwise, as is just now said. But if he stay till the Ordinary do, *ex officio*, declare the Living void, and give notice of it to him, he is safe: For the six Months of Lapse do not
com-

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commence, before such Notice be given by the Ordinary to the Patron.

And if both Patron and Ordinary do either by Consent, or thro' Ignorance of the Fact, permit such a Clerk to continue in Possession, he is safe; the first Living, before Deprivation, cannot lapse either to the Crown, or Ordinary. If indeed the Ordinary do pass Sentence of Deprivation, then Usurpation may be practised; but no Stranger can disturb the Clerk or Patron, till Voidance be declared. *Watf. c. 12. p. 81, 82.*

Cession is not now made by taking a Deanry, or Archdeaconry, or Prebend; because now they are declared not to be Benefices with Cure, by *Stat. 21 Hen. VIII.* and Benefices without Cure make no Cession either by the Statute or Canon-Law, as now understood; yet see the foregoing Chapter.

But no Clergyman is capable of being Dean and Prebendary, or holding two Prebends in the same Church; but the first of these Preferments is said to be void upon taking the second. *Watf. c. 2. p. 5. Sed quære pro jure?* But I take it, that this must be understood of such Prebends as give a Man Right both *ad locum in Choro*, and *suffragium in Capitulo*. For if he have only a Stall in the Choir by one Place, he may, I presume, hold another with it, whereby he has *suffragium in Capitulo*. Therefore the Archdeacon, because, as such, he has no Vote in the Chapter, may be either Dean or Prebendary in that Church where his Archdeacon's Stall is.

And in *Salisbury*, the Bishop, Dean, Chancellor, and Treasurer have each of them a Prebend united to their Dignities; as the late Dean inform'd

form'd the Editor of *Cambden's English Britannia*. See *Additions to Wiltshire*, p. 107.

Yet a Man may have two Benefices in one Parochial Church; and if one of them be a *Sine-cure*, by the *Stat. 21 H. VIII.* he may hold both without Dispensation: And 'tis great pity but these *Sine-cures* should every where be perpetually united to the Vicarages of the same Church; and, I hear, some of our good Bishops are heartily engag'd in this Pious Work: But if the two Benefices in the same Church have both the Cure of Souls *actually* annex'd to them, they cannot be held without Dispensation, by one Clergyman. *Watf. c. 2. p. 4.*

What is call'd *Cession* in other Benefices, is call'd *Creation*, in relation to a Bishoprick. For if an Incumbent be made Bishop, his Benefice is said to be vacant by *Creation*, unless he be only Suffragan, and the King shall present to it, or else give the Bishop a *Dispensation to retain it*, with his Bishoprick, and this is called *Com-mendam retinere*: if the Bishop do take such *Dispensation to retain it*, and yet afterwards resign it, the rightful Patron, and not the King, shall present; and if the Bishop that has such Dispensation do not resign, but be translated to another Bishoprick, and do not renew his Dispensation before he be confirmed, the Benefice is thereby vacated, and the lawful Patron shall present. And 'tis of this Case that Mr. *Hughes Pars. Law*, p. 164. must be understood, when he says, *That of a Voidance by Creation, the Patron must take notice at his Peril.*

III. A Church may become void by Resignation ; and this must be made *sponste, pure, & simpliciter* ; that is, without any Condition annex'd. It must be made Personally, or the Instrument of the Resignation must be directed to the Bishop, or other Ordinary, who hath Power to institute to the resign'd Benefice. And 'tis at his Discretion, either to refuse or reject the Resignation. See *Stilling. Bonds of Resignation*, p. 66. See a *Form of Resignation* in the *Appendix. No. 7.*

If the Ordinary accept the Resignation, he is bound to give Notice to the Patron, and the six Months do not begin, till such Notice be given ; but if the Patron present before such Notice, 'tis good.

A Donative must be resign'd into the Hands of the Patron.

In order to exchange two Church Preferments, Resignation must be made to the several Ordinaries, and the several Patrons must present, or collate each of the Clerks to the other's Benefice ; so that if either of the Ordinaries or Patrons do not consent, no Exchange can be made. And in case of an Exchange, *Civilians* have allowed, that Benefices may be resign'd conditionally. See *Parf. Couns.* p. 167.

If the Exchange be not executed on both Parts, or if the Reason of the Exchange fail, either Clerk may return to his former Benefice. *Watf. c. 4. p. 17.*

If Money be given on either side, in order to Exchange, 'tis a corrupt Bargain, within the Statute 31 *Eliz. c. 6.* and both Parties forfeit double the Sum given.

IV. A Church may be void by Act of Law: as,

1. By *Simony*, as the Canonists call it, and as it is likewise stil'd by Statute 1 *W. & M. c. 16.* that is, Giving or Promising any Money or Reward, directly or indirectly, for Holy Orders, or to get a Benefice. And,

If a Clerk do, by any Simoniack Bargain, or Gratuity, procure himself to be Ordain'd, any Benefice which he accepts within seven Years next following, is void, and the Clerk forfeits 10 *l. Stat. 31 Eliz. c. 6.*

But in this Case, the Living is not void till after Induction; and the Bishop is to give Notice to the Patron, or else no Lapse accrues. *Watf. c. 6. p. 31.*

2. If any one that has a Voice in Electing to any Place in any Church, College, Hall, &c. shall take any Reward, or promise of Reward, for their Voice, the Place is void; and they who have Power to dispose of the Place, may dispose of it, as if the Person before elected were dead, *Stat. 13 Eliz. c. 6.* so that in this Case the King is not to present.

3. If a Clerk do give, or promise Money or Reward to be presented to a Living, when it is actually vacant at the time of such Gift or Promise made, he is for ever incapable of holding that Living, by the said Statute, and, by the Canon-Law, of any other; and besides, he forfeits two Years Profits of the Living, according to the extended Value. And he who takes the Money, or Promise, forfeits the same with the Clerk; and the Patron, tho' he knows nothing of the Bargain, loses his Preferment for that Turn to the King. *Watf. c. 5. p. 23.*

4. If

4. If a Father, or other Friend do, after the former Incumbent is dead, or at the point of Death, or sick of some fatal Disease, give, or assure any Sum of Money for a Benefice for his Son, both the Giver and Taker forfeit as in the former Case, and the Benefice for that Turn shall be presented to by the King. But the Clerk, if he be not conscious to the Crime, may be presented *de novo*, by the King.

5. If Money, or Reward, be taken for granting Institution, Installation, or Induction, except lawful Fees, the Party so offending, forfeits two Years value of the Benefice; and the Institution, &c. by this means gained, shall be null, and the Patron shall present *de novo*; to which purpose, Notice shall be given to him by the Ordinary, or else no Lapse occurs.

6. If any Person do take any Reward, or Assurance of Reward, for resigning his Place in any Church or College, the Party giving, forfeits the double Value; and the Party taking it shall be incapable of such Place; and he, or they, to whom such Place appertains, may dispose thereof, as if the other Person were actually dead.

No Dispensation can make a Simoniacal Presentation, Institution, &c. good, *ex post facto*.

A General Pardon takes off the Fines and Forfeitures; but the Church was not full by the Simoniacal Presentation, or Institution, and the Pardon does not fill the Church.

He who offers Money, tho' he be afterwards presented *gratis*, is disabled to hold that Church; and that, tho' the Money be offered by a third Person, and not to the Patron, but to his Friend. See *Watf. p. 22, 23, 27.*

Simonijs

Simonist, is he who has himself consented to corrupt Contract.

Simoniacally promoted, is he who obtains a Living by the corrupt Contract of other Persons, to which he himself is not conscious.

Both the *Simonist*, and he that is *Simoniacally* promoted, having no Right to the Benefice to which they were presented, are accountable for all Profits receiv'd, to the Clerk whom the King Presents. But the innocent Clerk, coming in betwixt the *Simonist* and the King's Clerk, is not accountable, tho' liable to be remov'd. See *Watf. c. 40. p. 316*. No more is he that forfeits his Living, by neglecting within two Months to read the *Articles*, or that is wrongfully collated by the Bishop.

He that comes in by *Simony*, is liable to pay First-Fruits, Tenths, &c. and yet if he sue for Tythes, the Parishioners may plead *Simony*; and that is a sufficient Bar against his Right. *Ib.*

He that only reads the Statute of 31 *Eliz.* or the Oath given by the Bishop, and enjoyn'd by the Canon-Law, ever since the Time of Archbishop *Langton*, 1222, would think it altogether unlawful to purchase a Presentation to a Benefice before it be vacant, as afterwards: but it was a Practice allow'd of, to buy a Presentation during the Life of the Incumbent, both by the Common and the Canon-Law. But now by Stat. 12 *Annæ*, if any Person after Sept. 29. 1714. do, for any Money or Advantage, or Promise of any Money or Advantage, directly or indirectly, in his own Name, or in the Name of any other, accept the next Presentation to any Benefice, and be Instituted thereupon, every such
Pre-

Presentation, Institution, &c. is void; and such Agreement shall be deem'd a Simoniackal Contract, and that Turn lapses to the Crown: the Person who accepted it is incapable of that Benefice, and may be prosecuted for Simony in the Ecclesiastical Courts, in like manner as if the Benefice had been actually vacant when the Agreement was made.

This Law does, by consequence, forbid the Advowson to be purchas'd by any Person who intends himself to be presented upon the next Voidance; for to buy the next Voidance is *Simony* in the Person to be presented; therefore I conceive he who purchases the Advowson with design of having himself presented, upon the next Vacancy, will be defeated: for in case where the purchase of the next Turn is *Simony*, there it cannot pass under the Name of *Advowson*. For this reason the present Voidance could not, before the making of this Act, pass under the Title of *Advowson*; and, I suppose, for the same reason, the next Voidance now will not pass under that Denomination, to him who buys the *Advowson*, in order to possess himself of the Benefice when next Void.

If Presentation to a Benefice be promised in consideration of Marriage, or of a Jointure settled on the Woman by the Clerk, or his Father, 'tis *Simony*; but if the Promise be made to the Clerk, under Hand and Seal, among other Articles of Marriage, and this Covenant be not in consideration of the former, nor depending thereupon, it shall not be judg'd *Simony*, without some particular Averment; and a Bond for performance of such Covenant has been adjudg'd good.

Watf. c. 5. p. 22. 'Tis

'Tis the prevailing Opinion, and has been adjudg'd, that a Bond given for performing Simoniacal Covenants, is good at Law, and that therefore the Money must be paid, if Presentation were made, tho' the Benefice be lost. But see *Bishop Still. Bonds of Resignation, p. 12.*

How far Bonds given to oblige the new Incumbent to some charitable Pension to the Wife, or Son of the Predecessor, are allowable in Law and Conscience; or whether a Clergyman can lawfully take the Oath of *Simony*, who has given a Bond to resign upon demand, or at such a certain time; you may see by reading that most excellent Book just now quoted.

The Clergyman that has given such Bonds, is been judg'd safe from the Penalty of the Statute; but the Oath is not impos'd by the Statute, but by the ancient Canon-Law, and ought therefore to be understood, or interpreted in the sense which that Law puts upon it. And it is certain, that all Compacts, in order to the obtaining of Living, are forbid by that Law: So that the Clergyman cannot in Conscience bring himself under any Obligation to do any thing, but what he is, in Law, or Conscience, bound to do without such Obligation laid on him by the Patron, to suppose, to officiate Personally, Reside, Repair, or rebuild a ruinous Manse, &c.

And 'tis to be observ'd, that this Act, besides the Penalties expressly inflicted by it, does likewise leave the Simoniacal Clergyman, or Transgressors, to the Lash of the Spiritual Courts; and it does the Patron too, tho', in one respect, it is more favourable to him than the Canon Law is: For by this last, the Patron lost his Advowson

vowson *in perpetuum*, by selling the Presentation. See *Prov. L. 5. T. 3. Nulli liceat*; by the Statute he only loses the next Turn: But in another respect, the Statute is more severe than the Canon; which is, that it cannot be dispensed with; whereas, both Patron and Clerk, with their Money, might purchase a *Salve for any Sore* of this sort, from the *Pope*.

By the 31 *Eliz.* tho' the Clerk that was Simoniacally presented, died possessed of the Benefice so obtain'd, and another Clerk were without any Simoniacal Agreement Instituted and Inducted into the same Living; yet the King's Clerk, upon discovery and proof of *Simony* committed upon the Preferment of the former Clerk, should remove the innocent Clerk, and defeat the Title of the innocent Patron: But now, by the 1 *W. & M. c. 16.* 'tis provided, that *after the Death of one Simoniacally promoted, his Simony shall not be alledg'd, or pleaded to the prejudice of any Patron innocent of Simony, or his Clerk.* But if the same Patron present the first Clerk corruptly, and after, the Death or Cession of him, another fairly, this latter Clerk is removable; because by the former *Simony*, the next Turn belongs to the King; but if that Patron be dead, and the Heir present, the Clerk is safe.

2. If a Benefic'd Clergyman do Affirm, or Maintain any Foreign Power, in Preaching or Words, upon his first Conviction, all his Spiritual Promotions shall be void. 1 *Eliz. 1.*

3. He that has maintain'd any Doctrine contrary to the 39 *Articles*, and being conven'd before the Ordinary, does persist therein, or after Revocation thereof, shall affirm the same again,

is lawful for the Ordinary to deprive him
13 Eliz. c. 12.

4. 'He that does not make his Declarations in the Church, according to the 14 Car. II. c. 4. is depriv'd *ipso facto*. And so likewise is he, by the said Act, who does not read the 39 Articles, giving his Assent and Consent.'

Sir S. Degg advises his Clerk, that has omitted to read the *Articles* or *Liturgy* in Form, to obtain the King's Presentation, *ad Corroborandum*, and thereupon to perfect his former Neglects; or to procure Letters Patents of Confirmation, which may be pleaded in Bar of the King's Title, p. 58. I question whether any such Presentation or Letters are granted.

5. 'If Tenths be demanded at the Churches, Houses, or Stalls of benefic'd or dignify'd Clergymen, any time after *Christmas*, by such as are charg'd with the Collection of them, and not paid upon Demand, or forty Days after; and if the Bishop do certify the Default unto the *Exchequer*, the Clergyman making such Default, is *ipso facto* depriv'd: but of that Benefice only from which the said Tenths were due. 26 Hen. VIII. c. 3. 2, 3 Edw. VI. c. 20.

6. All Ecclesiastical Persons shall, within three Months after they enter on their Benefices, take the Oath commonly call'd the *Abjuration Oath*, or else the Place is void, 13 W. III. c. 6. 6 Ann. c. 7.

7. 'Sixty Days Absence in one Year, of an Incumbent, presented by the University, to the Livings of *Papists*, make such Livings void.' W. & M. c. 26.

8. Any Minister that uses any other Form of *Open Prayer*, or Administring the Sacraments, than what is contain'd in the *Book of Common-Prayer*, or refuses to use the said Forms, or does deprave the *Book of Common-Prayer*, or any part of it, shall, upon his second Conviction by twelve Men, forfeit whatever Spiritual Promotions he is possessed of, and suffer six Months Imprisonment; and upon his third Conviction he shall lose his Spiritual Promotions, and be imprisoned during his Life, 1 *Eliz. c. 2.*

And here it may be observ'd, that Voidance by Act of Parliament, need not be notify'd to the Patron, except the Act, by which the Church is voided, do expressly require it, as the 13th of *Eliz.* and the 14th of *Car. II.* do. But in other Cases, where the Church is made void by Statute, the Patron must take notice at his Peril, and present within six Months. *Wats. c. 6. p. 34.*

V. Farther, there are several Crimes for which a Man may be depriv'd of his Benefice by the Canon-Law, by Sentence in the *Spiritual Court*.

1. *Manlaughter*, after the Clerk has been convicted of it in a *Temporal Court*, is sufficient Cause of Deprivation in the *Spiritual*: if the Necessity that the Clerk was under, in defence of himself, were not altogether unavoidable; or if by his Care, and Heedfulness, the Murder might have been prevented; or if the Business he were engag'd in, and through occasion of which the Murder was committed, were unlawful: As if a Clergyman being upon the Game shoot at a Beast, but kill a Man, which was the Case of Archbishop Abbot. For Hunting, and such

Such like Exercises, have always been forbid
Clergymen by Canon. See *Pro. L. 1. T. 4 v*
homicidas Const. Othob. Ad hæc quoniam, Gloss.
Watf. c. 6. p. 35.

2. *Adultery* is a Crime, for which Clergymen
are deprivable by *Canon-Law*; and for which
some have been deprived since the Reformati-
on. See *Instances, Stilling. Eccl. Cases, p. 82.*

3. *Drunkenness* is another Crime which makes
Men liable to the same Censure, but not till af-
ter Admonition; there are Precedents of Depriva-
tion for *Drunkenness*, in the Reign of King
James I. Stilling. Eccl. Cases, p. 78, 79. And
when Application has been made to the Judges
in *Westminster-Hall*, for a Prohibition, to stop
the Bishop's Proceeding in this Case, it has
been deny'd, *p. 81. ibid.*

4. *Perjury* is a just Cause of Deprivation,
Godol. c. 27. §. 2. if committed within an *Ec-
clesiastical Court*, or in any other, says *Watf.*
p. 140. and so likewise is *Forgery*, says
Sir S. Degg. p. 82.

5. *Waste*, or enormous *Dilapidation*, renders
Clergymen liable to be depriv'd. *Godol. c. 27.*
sect. 2.

6. *Heresy*, or *Miscreancy*, is on all Hands
agreed to be a Crime, that makes the Clergy-
man obnoxious to this high Censure.

7. The Judges have declar'd it lawful to de-
rive an Incumbent, for not conforming to the
Canons. *Stilling. Eccl. Cases, p. 373.*

8. *Illiterature*, or *Inability*, for the discharge
of the sacred Function, is a Crime of the same
nature. *Godol. ubi supra. Watf. c. 6. p. 35.*

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9. *Not wearing the Surplice*, has been adjudg'd a sufficient Cause of Deprivation; no less a Man than a Dean of *Christ-Church*, *Tho. Sampson*, in 1564, is said to have fallen under this Censure, upon this Account, in *Q. Elizabeth's* Reign.

10. *Incontinency*, is commonly said to be a Crime of the same nature, in the *Canon-Law*; but 'tis much more evident, that a Man was deprivable for being Married by the *Old Canon-Law*, than that he was liable to this Punishment for *Fornication*. The Words of *Lyndwood*, an unmarried Clergyman and Canonist, are very observable on this Occasion; *A Clerk ought not to be deprived for simple Fornication, by the Canon favourably interpreted, tho' perhaps it may be otherwise by the rigour of the Canon*. The Constitution of *Otho.* is to this Effect: 'That a Clergyman, for *Fornication*, shall be suspended, both *ab Officio & Beneficio*, in case he do not dismiss his Concubine, and make Satisfaction for his Crime; and that, if he meddle with the Benefice, or Office, during Suspension, he shall be depriv'd. *Licet ad Prof. & Gloss.*

But, by *Stat. 31 H. VIII. c. 14.* the Clergyman that kept a Concubine, for the first Offence was depriv'd, and the second Offence was Felony. But this was repeal'd the next Year, and another Act made, whereby, for the first Offence, the Clerk forfeited all his Personal Estate, and the Profits of all his Livings, but one. For the second Offence, all his Real and Personal Estate, Benefices, Promotions, &c. For the third Offence, the like Forfeiture, and perpetual Imprisonment.

'Tis true, this last Act forbids Cohabiting with a *Wife*, as well as a *Concubine*; but by *Stat. 2, 3 Edw. VI. c. 21.* and *5, 6. c. 12.* and *1 Jac. c. 25.* it is repealed, so far forth as it prohibits the former, and is therefore only in Force as to the latter, that is, keeping a *Concubine*. See *Parf. Counsel. p. 119, &c.*

11. If a Clergyman be Excommunicated for *Contumacy*, and remain so for 40 Days, he shall be depriv'd. *Godol. c. 27. Sect. 19.*

12. *Bastardy*, is likewise a Note of *Infamy*, for which a Clerk may be turn'd out of his Benefice; but here the King's or Archbishop's Dispensation saves him: And indeed most of the 12 last mention'd Causes of Deprivation cease, in case the King think fit to pardon the Delinquent. But no Pardon from the King can restore a Clerk to his Living, where an Act of Parliament has made it void, or where there is an Inability in the Person to discharge his Office. *Watf. c. 5, 6. p. 28, 36, 37.*

By our last Canons, and by the antient Canon-Law, no one can pronounce Sentence of Deprivation, or Deposition on a Clergyman, but the Bishop himself; but the Glossators do so understand these Canons, *viz.* that none but the Bishop can deprive him of his Right or Title, if he have committed any Crime that deserves such Censure; but in case the Canon have already declar'd him depriv'd *de Jure*, and the Fact be notorious, as the taking a second Living without Dispensation, when the first is under 8*l.* Value, or the like, then an Official may pass Sentence, so as actually to dispossess him; and this I take to be the present Practice.

If a Clergyman having Sentence of Deprivation pass'd upon him, by his immediate Ordinary, do appeal to a superior Court; the Sentence is by this means suspended, and shall take no Effect, if it be not affirm'd by the Court, to which he has appeal'd. *Godol. c. 27. Sect. 17.*

Some, indeed, think it unreasonable, *That Men should be turn'd out of their Freehold by a Canon*: But it ought to be consider'd, that the *Canon-Law*, so far as it is receiv'd, is in effect a part of the *Common-Law* of the Nation, as being founded upon immemorial Custom and Practice; and that the Old Canon-Law, so far forth as it ever was receiv'd, and does not contradict the Holy Scripture, the King's Prerogative, or any Law or Custom of *England*, is still in force. (*Stillingfleet's Eccl. Cases, from pag. 348, to pag. 376.*) And that Bishops and Ordinaries have been in possession of this Power for many Ages past; and, indeed, as long as there have been Churches and Parishes in *England*; that neither our Parliaments nor Princes, did ever yet see any just Cause to divest them of this Power; but have, on several Occasions, own'd and confirm'd it. Thus, for Instance, the Act of 1 *Eliz. c. 2.* approves of those *Censures and Deprivations*, formerly used by Bishops, and Persons having *Ecclesiastical Jurisdiction*, and declares, that they shall have full Power and Authority to punish the same Crime, which was Disobedience to the Queen's *Ecclesiastical Laws*, for the Time to come. There is a like Reserve in the Act against *Simony*, 31 *Eliz. 6. viz.* that nothing in this Act contain'd, shall restrain any Punishment inflicted by the Law *Ec-*

Ecclesiastical, for any Offence in this Act mention'd, but the same shall remain in Force, and be put in due Execution, as it might before the making of this Act. Where the *Canons* are call'd *Ecclesiastical Laws*, (for there was, before this, no Law against *Simony*, but what was contain'd in them) 'tis acknowledg'd that they might be put in Execution before this Act; and yet Deprivation was one Censure provided against *Simony*, by those *Canons*, and might be inflicted on the Clerk, not only for the Living corruptly obtain'd, but for all other Benefices and Promotions whatever; and if it may still be inflicted, then all Deprivation by Canon is not unreasonable, if the Prince and Parliament may judge.

There never was so much Complaint of the Abuse of this Power of Deprivation, as during Archbishop *Laud's* Time, who was advanc'd to the See of *Canterbury*, *A.D.* 1633. yet upon King *Charles's* Restauration, all *Ecclesiastical Jurisdiction* was restor'd to the state that it was in by Law before 1639.

Archbishop *Laud* was executing this Authority upon delinquent Clergymen, the five Years preceding 1639. And 'tis strange, that if the Parliament had thought these Proceedings Illegal, they should look no farther backward, especially in that very Act where they set aside the *Canons* of 1640. and the *High Commission Court*, viz. 13 Car. II. c. 12.

Lesser Degrees of Censure for smaller Neglects in Clergymen, are *Suspensio ab Officio*, and in some Cases, tho' very rarely, *Suspensio ab Officio & Beneficio*. Before the Reforma-

tion, the Bishop, for some little Omissions, was enjoin'd by his Metropolitan, to go without some part of his Habit, often mention'd in the *Provincials*.

C H A P. XII.

Of Sequestration, and Commendani.

Sequestration is an authoritative Act of the Judge of any Court, whereby he commits the Custody of any *Thing* (as for Instance, some valuable Chattel left by a Defunct) or *Person*, (as a Maid to whom two young Men lay claim, as precontracted to them. See *Lynd. L. 2. §. 4. p. 135.*) to some faithful and responsible Hands; till it does appear to whom they do of Right belong, or till the Judges Injunctions be executed.

If an Incumbent, having been admonish'd by his Ordinary to repair the Chancel, or Parsonage or Vicarage House, do neglect to do it, the Bishop may cause the Fruits, or Profits of the Living, or some part of them (rarely more than a fifth) to be sequestred; that is, to be receiv'd by some trusty Person, and applied by him to the making good the Repairs, he returning the overplus, if any be, to the Incumbent. See *Const. Otho de Domib. Eccles.* Some have said, That the Impropriator's Tythes may be sequestred for the maintaining of the Chancel, if need be; and 'tis certain they might, while they were in the hands of the Monks, and there is no
Law

Law since made to exempt Lay-Impropriators from the Authority of the Bishop in this respect. But see *Watf. c. 39. p. 302.* where it appears, that the Judges have sometimes been of another Opinion. The common Way of Proceeding against Impropriators in case of such neglect, is the same as against the Churchwardens, or Parishioners, for not repairing the Church, viz. by Citation, Admonition, and in case of Contumacy, Excommunication: If the Impropriator do not live in the Diocese, then the Process is against the Tenant, or him that receives the Tythes. And I have known the same course taken with Gentlemen, that have claimed the Right of a lesser Chancel, or Chancel, in a Parish-Church, by which the Parties concern'd have been oblig'd to make good the Repairs, upon their being Presented by the Churchwardens: But I meet with nothing in the Law-Books upon this Head. See *Parson's Counsel. p. 142.* where he intimates his Opinion, that the Impropriator is liable to a Sequestration for not repairing his Chancel.

Sometimes a Benefice is sequestred to pay for the Service of the Cure, or by Virtue of a Writ from the King in his Temporal Courts directed to the Bishop, to pay the Debts of the Incumbent. *Godolph. Append. to Abridg. §. 40.*

But the most common occasion of Sequestration, is the Vacancy of a Benefice, during which time, the House and Glebe are said to be *in Reversion*, i. e. in *Expectance*; and the mean profits are to be receiv'd by the Ordinary, or his agent; which is usually the Churchwarden, authorized by Seal of Court, 'To receive the

'Profits (if any be) during the Vacancy, to provide for the Service of the Cure;' and if the Fruits of such Benefice receiv'd be not sufficient to pay for the Service of the Cure, the next Incumbent shall do it within 14 Days after his Induction. Stat. 28 Hen. VIII. c. 11. and the Ecclesiastical Court is to see that their Sequestrator be not damag'd.

In old time, if the Incumbent liv'd to Lady Day, the Tythes of the following Summer and Harvest were his, so that he might dispose of them by Will, or otherwise. *Prov. L. i. c. 2 p. 23, 24.* And then, and afterwards especially they were in many places, by Custom, levy'd by the Ordinary for his own use, till Stat. 28 H. VIII. c. 11. gave Profits arising during Vacancy to the Presentee, toward payment of the First-fruits; and any Ordinary binding him to have the Profits, forfeits treble Damages. But the Ordinary has still Power left by that Statute to sequester the Tythes; and 'tis expressly provided, that he shall be allow'd the Charges of the Cure, and innings of the Tythes.

And by the same Statute, the Successor shall upon a Month's Warning, have the Parsonage House, and the Glebe, not sown. But Grain sown by the deceased Incumbent on the Glebe Land, is at the disposal of him who sow'd it, but it shall pay Tythes to the new Incumbent, if it were not cut or sever'd from the Ground before the Death of the former Incumbent. See *Watf. c. 47. p. 403.* If the Benefice become void by Resignation, or Deprivation, there are no Rules whereby to decide the Rights of Predecessor and Successor, but what are drawn from

from the aforefaid Statute: And it is, it feems, allow'd to be Law, that in fuch Cafes the new Incumbent fhall have Tythes of his Predeceffor's Corn, &c. formerly fown; if it be not fever'd from the Ground before he vacated the Living, *Watf. c. 40. p. 320.*

Sometimes a Benefice is kept under Sequestration for many Years together, or wholly; namely, when 'tis of fo fmall Value, that no Clergyman fit to ferve the Cure will be at the charge of taking it by Institution; in which cafe the Sequestration is committed fometimes to the Curate only, fometimes to the Curate and Churchwardens jointly.

Sequestrators cannot maintain an Action for Tythes in their own Name at Common-Law, nor in any one of the King's Temporal Courts. *Quære*, Whether Suit may be maintained in thofe Courts in the Name of the Ordinary? If it may not, the Custody of fuch Churches which the Law has given to the Ordinary during Vacancy, will fignify very little; and the Maintenance of thofe Clergymen, who ferve thofe poor Churches, is very precarious; they can have no Remedy but in the Spiritual Court, or by Application to the Juftices of Peace; and if an obftinate, or wealthy Parifhioner think fit to try the Sequestrator's Right at Common-Law, the Clergyman has no Fence againft him: And befides, fuch Sequestrator is accountable.

† *The beft that can be faid is, that if the Clergyman begin his Suit, in the Ecclefiaftical Court, and a Prohibition be brought, the Clergyman may follow him, as a Defendant.*

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able to any hungry vagabond *Scot*, that can procure the Broad-Seal, and make himself Legal Incumbent. For most of these little Benefices are by long Vacancy laps'd to the Crown. Nor do I see any Remedy in this Case, but an Augmentation of the Value of them, which can scarce he hoped for in most Places of this Sort; or else the Uniting them to some neighbouring Churches: And if the Bishops have not power to do this, (as 'tis evident they have not in some Cases) 'twere much to be wish'd they might be enabled to do so necessary a Work.

It was before King *Hen. VIII.* common for the Ordinary to grant Sequestration of a Living (especially if in his own Gift, or laps'd to him) for six Months time, and such Sequestration was call'd *Commenda semestris*; and this was the only *Commendam* that the Canon Law did approve of, tho' *Commendams* for a longer time, or even for Life, were all along used. See *Constitut. Otto. Miserabilis. Prov. L. 3. T. 5. de Præbend. Gloss. in v. Commendam.*

None but the Bp. can now hold any Benefice, or Dignity by *Commendam*. The King by his Prerogative may command the Abp. to grant Dispensation to any Person Nominated to a Bishoprick, before Consecration, (if the Bishop be new created, or before Confirmation, if he be Translated) or may himself grant Dispensation to such Person to hold any Benefice, or Inferior Dignity together with his Bishoprick. If it be to hold a Benefice, or Dignity, which he had before his Nomination, then the Dispensation is called *Commendam Retinere*: If he had not the Benefice, or Dignity before, then

then it is *Commendam Recipere*. A *Commendam Retinere* is either for certain Time, or perpetual, at the Discretion of his Majesty. A *Commendam Recipere* is always perpetual. If the *Commendam Retinere* be for a certain limited Time, the King presents to the Benefice at the expiration of that Term, tho' the Benefice be not originally his: But if the Bishop die or resign before the Expiration of that Term, then the Rightful Patron presents: And if the *Commendam* be perpetual, then the Rightful Patron presents upon the next Vacancy, that is, when the Bishop dies, or is Translated. But *Commendams* Temporary may be continued, or made perpetual, by a new Dispensation. No *Commendam* can be given without consent of Patron; but it is to be remembred, that the King is Patron, *pro hac vice*, of all Benefices becoming Vacant by the Incumbents being presented, or nominated by the King to any other Benefice, Dignity, or Bishoprick. See Bp. Gibson's Code, p. 955, 956.

Some have said, that a Bishop cannot hold a Benefice within his own Diocese, because he cannot visit himself; but see *Godolph.* to the contrary, c. 21. sect. 9.

In case of *Commendam*, no Institution is necessary: and a Bishop may be licensed to hold a Living in his own Gift, by these Words, *Auctoritate sua propria capere, & apprehendere absque Institutione, Collatione, &c.*

C H A P. XIII.

Of First-Fruits, and Dilapidations.

F*irst-Fruits* were an Art of *Simony*, invented by the Pope, who bestow'd Bishopricks, Benefices in *England* on Foreigners, by way of *Provision* and *Reservation*; on Condition that the first Years Profits were given to him for the regaining of the *Holy-Land*, or some such goodly Pretence; next, he prevail'd on Spiritual Patrons to oblige their Clerks to pay them, and at last by degrees he claim'd, and extorted them from those who were presented by the King, or his Temporal Subjects.

It is observable, that the Pope could never obtain the First-fruits of Benefices in *England*, but of Archbishopricks, and Bishopricks only. Nor did he ever receive Tenths here, as a settled annual Revenue; but by occasional Grants only. But now by *Stat. 25 Hen. VIII. cap. 20.* and *26. c. 3.* both First-fruits, and Tenths, are made a standing Revenue to the Crown. And by that Act, *He who enters upon any Spiritual Living, before he pay or compound for them, upon Conviction, forfeits the double Value thereof:* To avoid such Penalty, the Clerk either before Induction, or soon after (for the Officers will squeeze Money out of him for any small delay (must go to the First-Fruits-Office, or send two Friends of the City of *London*, *Inns of Court*, or Parts adjacent; if he go himself, one such Friend is sufficient, (except

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the Benefice be above 30*l.* *per Ann.* in the King's Books; for then two Bonds-Men are required (and enter into Bond to pay the First-Fruits of his Benefice within two Years next coming, at four equal half yearly Payments: But one tenth part of the whole Sum mention'd in the King's Books, is to be deducted: For that is to be paid distinctly by itself, the first Year, as well as all the following, to the Collector of Tenths; the Day of Payment mentioned in the Bond, is always the first Day of some Month, and if Payment be made on any following Day of the said Month, 'tis sufficient; but if the Clerk stay till another Month begin, he will be made to pay for his delay.

By *Stat. 1 Eliz. c. 4.* Vicarages that are not above ten Pounds Yearly, and Rectories not above ten Marks, are excused from paying First-Fruits; he that takes such a Living, has nothing to do with this Office.

Four Bonds were formerly given for the four several Payments: Nay, from the Reign of K. C. II. to that of Q. Anne, a fifth Bond was required, whereby the Clerk was oblig'd to pay according to the full extended Value of the Benefice, in case it should appear that it was not valued to the height in the King's Books; And yet the Statute of 26 H. VIII. mentions but one Bond, for which no more was to be paid than 8*d.* and 4*d.* for each Acquittance. But I never heard of any Clergyman that could persuade these Officers, that this part of the Statute was good Law.

' By that pious *Statute 2 & 3* of Queen ANNE, it is provided, that but one Bond only

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‘ only shall be given, and the present Rates of
 ‘ all Benefices, according to the King’s Books,
 ‘ are declar’d to be unalterable.

‘ By *Stat. 1 Eliz. 4.* in case the Clergyman
 ‘ that has given Bond for First-Fruits die, or be
 ‘ legally outed, before the several Payments be-
 ‘ come due, there is a Remittance, or Mitigation
 ‘ of the future Payments. But some Clergy-
 men, and their Executors have notwithstanding
 been obliged to pay the full of their remaining
 Bonds, and could find no Remedy but what
 was worse than the Disease.

The Successor is chargeable with Arrears of
Tenths due from his Predecessor, and therefore
 is empower’d, by 27 *H. VIII.* ‘ in such case to
 ‘ distrain his Predecessor’s Goods, being upon
 ‘ the Benefice; and has likewise a good Action
 ‘ against him, or his Executors at Law.

But for Dilapidations the Remedy is not so
 easy, the Successor can only sue the Predecessor,
 or his Executors in the Spiritual Court, (in
 which case no Prohibition lies) or at Common-
 Law, by an Action of the Case. *Watf. c. 39.*
p. 311. All Debts shall be paid before Dilapi-
 dations, Legacies shall not. *Parson's Counsellor,*
p. 75.

‘ If the deceased Predecessor make any Con-
 ‘ veyance of his Goods, to deprive his Successor
 ‘ of Remedy in case of Dilapidations, the Spi-
 ‘ ritual Court may proceed against the Grantee;
 ‘ as it might have done against the Predecessors,
 ‘ Executors or Administrators, by 13 *Eliz. c. 10.*
 But *memorandum*, that by this Act no Clergy-
 man can sue his Predecessor or his Executors,
but only for so much of the Dilapidations as
barb

that happen'd by his *Fact*, or *Default*. Therefore all Incumbents, when upon their Induction they find the House to be ruinous, and no *Assets*, may do well to have the Reparations survey'd by able and creditable Workmen; making a Distinction between the Repairs wanting at the Death of the former Incumbent, and those which have happen'd since; for if the succeeding Incumbent remove or die in a short time, and particularly before the two Years are expired, which the Statute allows him for making good the Repairs, then he, or his Executors, may justly plead the great Dilapidations committed by the former Incumbent, and his want of *Assets* in mitigation of the Damage which his Successor may demand of him, or of his Executors. But if he continues Incumbent many Years, it will be to little or no Purpose to plead the bad Condition in which the House was left by the first Incumbent, or the Non-solvency of him and his Executors.

By the Constitution of *Edmund*, Archbishop of *Canterbury*, Dilapidations are made a Debt, and the Predecessor is to make good all Defects in the House and Chancel, but only *de Bonis Ecclesiasticis*, out of what he has got by the Church.

While the Dilapidator remains Incumbent, the Ordinary has effectual Remedy against him: for he can sequester his Benefice for this Purpose; but if he die poor, or leave his Estate among artificial People, 'twill be hard, if not impossible for the Successor, to do the Church and himself Justice.

‘What

‘ What the Incumbent receives for Dilapidations of his Predecessor, must be faithfully laid out in two Years time, upon the House or Chancel, under Penalty of double the Sum to the King. 14 *Eliz.* 11.

Dr. *Watson* is of Opinion, that no Curate, tho’ he have a Lease of the Benefice, and by that be bound to repair the House, is liable to be sued for Dilapidations. *C. 39. p. 311.*

I have been lately inform’d of some Clergymen, who have serv’d a Cure some Months before the Death of an Incumbent, and upon his Decease, and the Succession of another, have been in doubt of whom to demand their Pay; especially when the Incumbent died just before Harvest, and so left the main of the Years Profits to the Successor. But here is no room for Dispute; for he who employ’d the Clergyman must pay him, and if he be dead, his Executors must do it. If the Incumbent had serv’d the Cure in Person, to the Day of his Death, neither he nor his Executors could have demanded any Satisfaction of the Successor, but must have been contented with so much of the Tythes as became due before his Death, or Cession: and if he did not do it in Person, ’tis clear he was bound to do it by some other, and consequently to pay him for it. I have known several rich and hardy Executors, that have found themselves constrain’d to pay for serving the Cure till the Testator’s Death, and that in one Case, when the Testator had had no Tythes become due to him in ten Months before his Death.

C H A P. XIV.

Of RESIDENCE.

HE that is *wilfully* Absent from his Benefice for one Month together, or two Months in the whole Year, tho' at different Times, forfeits Ten Pounds, the one half to the Crown, the other to him that will sue for it. *Stat. 21 Hen. VIII. c. 13.*

'But Chaplains to the King, or other Great Persons, mention'd *Chap. X.* are excused from Residence, whilst they attend those who retain them, by *Stat. 21 Hen. VIII.* and by *Stat. 25 Hen. VIII.* all the Twelve Judges, and the Attorney and Solicitor-General, may qualify one Chaplain, and excuse him from Residence, and by *33 Hen. VIII. c. 28.* the Chancellor of the Dutchy of *Lancaster*, and Groom of the Stole, have the same Privilege. But none of the Persons mention'd in these two last Acts can qualify a Chaplain to hold a *Plurality*.

And he who being qualify'd by *21 H. VIII.* to hold two Benefices, resides upon one of them, is held excus'd from what is an Impossibility; that is, to reside upon the other, if not by the Words of the Act, yet by equitable Construction, *Watf. cap. 37. p. 284.* 'Also he that has a Dignity, and Benefice, by residing upon one, is excus'd from Residence on the other, by the Words of the Statute; but then a Gospeller, or
Vicar.

Vicar-Choral, is not reputed to be free from the Penalties of the Statute, if he reside in the Cathedral, and be absent from the Parish-Church. *Watf. Ibid.* 284.

He that is, without Fraud, under Confinement for Debt, or removes for his Health, by the Advice of his Physicians, has been adjudged free from the Penalties of this Act. *Godol. c. 28 Sect. 9.*

‘He that is employ’d in the King’s Service, 9 *Edw. II.* or is under an Injunction from the Lord Chancellor to attend a Suit, 21 *H. VIII.* is not punishable for Non-residence.

‘Heads, and Professors in the University, and Clergymen under forty Years of Age, residing there, and hearing the Lectures, and doing Exercise in Person, are exempt from the Penalties of 21 *Hen. VIII.* See 28 *Hen. VIII.*

It has been adjudged, that Residence upon a Prebend, saves a Man from Residence on his Cures, if he has any. *Watf. c. 37. p. 284.*

Yet he who has two Benefices, and resides for the most part upon one, is obliged by the Words of his Dispensation *to reside sixty Days in the Year on that Benefice, from which he is absent for the most part, and preach Thirteen Sermons &c.* which is what the Canon-Law requires of him, says *Watf. Ibid.* 285.

‘He that is absent from his Benefice without Cure, above eighty Days in the Year, vacates any Lease, or other Bond, or Covenant made whereby he lets out his Benefice, or any part of it, and forfeits a Years Profit of his Benefice, and therefore the Bishop is, in this Case, bound to sequester the Living, and distribute the Profit.

among the Poor of the Parish; if not, the Parishioners may withhold their Tythes, 13 Eliz. c. 18 Eliz. 11.

But it has been adjudg'd, that he who upon all occasions resorts to his Parish, and serves the Cure thereof duly, tho' he does not dwell in the same Parish, saves himself from the Penalties of these last Acts of *Eliz.* *Watsf. c. 43. p. 360.*

But nothing is sufficient Residence by the *Hen VIII.* but dwelling in the *Parsonage* or *Parochial* House; if there be no House, then he is thought excused from such Residence. *Godol. 28. Sect. 9.*

Whether the Non-Residence by the Statute of *Eliz.* be to be computed all at one time, or at several times in the same Year, have been variously judged. *See Watsf. c. 43. p. 360.*

These Statutes of *Eliz.* were intended to prevent corrupt Bargains between Patron and Clerk. Being, it seems, then a Practice for Patrons to get some unworthy Clergyman to take Institution to vacant Benefices in their Gift, upon condition of having Leases of those Benefices, made to themselves at very low Rates, by which means these Patrons secured the main of the Benefices to themselves, and got them served at a low Rate, by Stipendiary Curates, while the Incumbents were Non-resident, and making their Fortunes elsewhere: So that the Statute was not primarily design'd against Non-residence, but against such Non-residents as, by corrupt Bargains and Leases, made themselves Tools to dishonourable Patrons, and he only offends against this Statute, who is Non-resident, and yet at the same time Leases out his Benefice.

But,

But, by these Statutes, he who is legally Incumbent in two Benefices, is permitted to let one of them, (*viz. that one, in which he shall not be most ordinary resident*) to his Curate only.

Leases to Curates.

In making a Lease to the Curate, or any other Person, let the Incumbent take care to have these Words, or such like, inserted, after having mention'd the Term of Years, *viz. If he do so long live, and shall so long continue Parson, or Vicar.* For if such Lease be made for Term of Years, without such Condition, the Lessee may recover Damages for not enjoining his Term, in case of Death or Resignation, before that Term expires.

For here it is to be observ'd, that a *Parson*, or *Vicar*, can make no Lease to bind his Successor, without Consent of Patron and Ordinary.

And even by Consent of them, he can only Lease such Parts of his Benefice *as have most commonly been letten* in times past, by *Stat. 32 Hen. VIII. c. 28.*

And farther : The Curate who takes a Benefice to Lease, ought by all means to be legally licensed by the Bishop himself, and to qualify himself according to Law : If he does not, he is no Curate in the Eye of the Law, and so his Lease is null. And farther, the Incumbent is liable to the Penalties of the Act, because he lets out his Benefice to one that is not really a Curate.

And that such Lease may remain in Force, the Curate must keep strict Residence, without absenting

enting himself forty Days in the Year, as has
en said in *Chap. 9.*

As to Residence and all other Matters, the Vi-
r is by *Statute Law*, upon the same foot with
e Parson; The Statute of *Pluralities*, does no
ore make two Vicarages incompatible, than
o Parsonages; and the Statutes that require
esidence, make no difference betwixt the one
d the other; but both *Vicar* and *Parson* are
bject to the same Penalties, if they be wilfully
on-resident; and that which excuses the *Par-*
n from Non-residence, excuses the *Vicar* too.

The Bishop, by his Dispensation, can save nei-
er *Vicar* nor *Parson* from the Penalties of the
atute Law in point of Residence; and he can
y the same Dispensation save both of them
ually from the Censures of the *Spiritual*
Court.

There was indeed an old Saying, *Vicarius non*
habet Vicarium; the Vicar has no Vicar, or Sub-
stitute; which yet never was exactly observed,
Lyndwood owns, *L. 1. Tit. Gloss. Eorum vices.*
However, by long practice, 'tis now as allowable
or a *Vicar* to have a *Curate* as a *Rector.*

In one thing, indeed, there is a difference,
which is, that the Vicar is sworn to Residence,
the Rector is not; but this Oath is with a Con-
dition, *viz. nisi aliter dispensatum fuerit*; so
that if the *Vicar* be dispensed with, he is, in
his respect too, upon the level with the *Parson.*

A Man is dispensed with, as to the Temporal
Courts, by Statute Law; as to the Spiritual
Courts, either by the Statute Law, or by the
Bishop's Faculty under Seal; and as to Consci-
ence, in relation to the Oath, by the Bishop's
verbal

verbal License, or his Faculty under Seal : But here it is to be observ'd, that a Bishop can only dispense for his own Life-time, and his Dispensation dies with him ; but that Vicar who is in actual Attendance on any of the Great Persons mention'd *Chap. 10.* and in this Chapter has a Right to be dispensed with, as to point of Residence, and he who is legally settled in two Benefices, has a Right to be dispensed with as to one of them ; and his Metropolitan's Dispensation to hold these two Benefices, is at least a virtual Dispensation to be Non-resident in one of them, tho' they be both Vicarages. Formerly, indeed, Archbishops did scarce ever dispense with Clergymen to hold two Vicarages ; but of late Years, 'tis sometimes allow'd of, with good Reason. Archbishop *Sancroft* himself did it tho' not often.

C H A P. XV.

Of the Privileges and Hardships of the C L E R G Y.

HE that beats a Clergyman, *incidit in Censuram* ; that is, he may be Excommunicated and obliged to do Penance by the Ordinary See *Parf. Coun. p. 130.*

A Clerk is exempt *from all Secular Burdens* *Ibid.* but not from new Charges, by Statute Law, but only those which are impos'd at Common Law, say the Modern Lawyers. *Ibid. p. 224.*

No Clergyman is bound to serve any Temporal Office, as Constable, Overseer of the Poor, &c. And this is the Privilege of Apothecaries, as well as those in Holy Orders. They are to be amerced not according to their Benefice, but their Lay-Tenement, by *Magna Charta*. Nor shall King's Officers make Distresses of Parson's Beasts in the King's Highway, and in Fees, (*i. e.* Lands) wherewith Churches have been endow'd, except such as are newly purchas'd.
9 *Edw. II. c. 9.*

The Bodies of Clergymen cannot be Arrested upon any Statute Merchant, or Statute Staple.

It is said likewise, that their Goods shall pay no Toll in Fairs or Markets, that they are not bound to appear at Court-Leets, or to serve the Office of Beadle, Rieve, &c. nor to follow Hue and Cries, nor to repair Bridges or Highways, to keep Watch or Ward, or to contribute to the Building of Goals, or to make good Robberies committed in any Hundred. *Godol. Abr. c. 17. pers. fin. Parson's Counsellor, p. 120.*

And these, and many more, undoubtedly were the ancient Privileges of the Clergy; but whatever the Law may be, it is certain the Practice is very often contrary. For Ministers are terrify'd, and forced to submit to these Burdens, rather than be at the Expence of a Suit at Law, where the Controversy is at last to be decided by twelve Laymen, whereof sometimes half are *Dissenters*, and professed Adversaries to Men in Holy Orders. Disputed Rights are Snares, rather than real Privileges; and it is much to be desired, that the Authority

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1146 *The Clergyman's Vade-Mecum.*

ity of the Nation would declare, whether Clergymen have any Exemptions and Immunities, or whether they are all worn out with Age. For 'tis as good in effect to have none as not to have them clear, and without Controversy.

Some reckon it among the Privileges of the Clergy, that they are not bound to serve in Juries; and 'tis certainly no very desirable thing for Clergymen to be oblig'd to attend Temporal Courts, at the Summons of every Bailiff. But, on the other side, I am so far from thinking that the being excluded wholly from Juries is a Privilege, that I think it one great Instance of the Hardships of the Clergy, that none of their Order are ever admitted to be Jurymen in Temporal Courts.

When there is a Controversy concerning the Right of presenting to a vacant Church, it has been, and still is, in some Cases, the Practice to have the Right try'd by a Jury, (impanelled by the Bishop, or his Vicar-General) where one half are of the Clergy, the other of the Laity, Why should not all Matters wherein the Churches Rights are concern'd, be try'd in the same manner? For I cannot see that it is more unreasonable, that Persons who may be supposed too much to favour the Rights of the Church, should be admitted to give their Verdict in such Causes; than that those, who by Principle, or Interest, are Prejudic'd the other way, should be impannell'd, as they often are on such Occasions. If Clergymen are part of the Commonalty of the Nation, why are they alone deny'd the Right of other Common

and Freeholders? If they are not Commoners, but a distinct Order of Men, why should not they have their Rights try'd, as others have, by some of their own Rank and Condition? And this is now the more necessary, since all manner of Causes, are, first or last, wholly or in part, generally brought before a Jury: The Clergy had no reason to desire to be Jury-Men, while they had Redress in the *Ecclesiastical Courts*.

By the same Figure that this last has been call'd a *Privilege*, there is another may be call'd so too; I mean the Ease given to the Clergy, by *Statute 21 H. VIII. c. 13.* by Prohibiting them, not only to take to Farm any more Lands than are necessary for the Maintenance of their own Household, but *to take any Annual Rents, or Advantage, or Profit, by occasion of any Lease, or Farm, by any manner of means,* under very severe Penalties indeed; nay, the Vicar is not permitted *to Occupy by himself, or any other, any Parsonage,* not so much as the Impropriated Tythes of his own Church. The Clergy of ancient Times did enjoy very many Immunities, and some of them very unreasonable ones: But that High-Tide of *Privileges* is now sunk to the lowest Ebb, even below the common *Liberties of English* subjects.

An Act was extorted from King *Charles* the Martyr, *Anno Dom. 1641.* To disable all *Persons in Holy Orders, to exercise any Temporal Jurisdiction or Authority*; but this was Repealed, by *13 Car. II. c. 2.*

The *Popish* Canon-Law likewise forbids secular Offices and Employments to Persons in Holy Orders: So does the Constitution of *Othobon* in the Reign of *Hen. III.* But 'tis plain, that the *Popish* Canons relating to this Matter were never received here, as being contrary to the *Articuli Cleri*, the 8th Chapter whereof *Exempts Clergymen bearing Office under the King from the Censures of the Ordinary*, and particularly those employ'd in the *Exchequer*; and in the Constitution of *Othobon*, there is an express *Salvo* for the *Royal Prerogative*: Upon which occasion *Athon* takes notice of great Numbers of Clergymen employ'd in *Chancery*, and complains of them for the *Prohibitions* frequently sent out of that Court, to stop the Proceedings of the Prelates in their Courts. See *Const. Othob. cum honestatis*. It is certain that notwithstanding the Canon-Law, yet for many Ages the Chancellors themselves, and many other of the Judges in Temporal Courts, were Clergymen.

'Tis said by some, that a Clerk in Holy Orders, if he be found guilty of a Crime, for which the Clergy is allow'd, he shall not be burnt at the Hand, as a Layman shall, and that a Layman can have his Clergy but once, but a Clerk *ad infinitum*. And these might be thought Privileges by a vitious *Popish* Clergy; but are rather a Scandal to the Regular Clergy of the Reformed Church of *England*; who, God thanked, neither want, nor crave any such Privileges as these. If a convicted Clerk have a Right to this Favour; yet one may easily affirm, that the whole Body of the Clergy

readily renounce this Skeleton of an old *Popish* Community, for any real Privilege that shall become Men of their Profession.

Dr. Chamberlain, in his *Present State of England*, 1694. p. 363. asserts, that "The Glebe, and Spiritual Revenues of the Clergy, are by an unpublith'd Statute, 8 *Hen. IV.* still in force, expressly exempted from arraying or mustering Men or Horses for the War. If the Doctor could have proved that this Act was not set aside by the *Statutes* in the Reign of *Charles* the Second, concerning the Militia, he had done the Clergy a substantial Service. And yet we know, that in case of any common Danger, as upon Apprehension of an Invasion, the Bishops tax'd their Clergy with Arms, in proportion to their Benefices. See *Somner's Lives of the Archbishops of Canterbury*.

And in the ancient Charters, before the Conquest, Lands granted to the Church, as they are generally granted with an Exemption from all other Burdens, so they are expressly declar'd liable to be charg'd in three Cases, viz. *Expositione, Pontis, Arcisve Constructione vel Reparatione*.

But by the old Laws of *England*, a Distinction was always made between the Spiritual and Temporal Revenues of the Church. The Spiritual Revenue was whatever arose from the Exercise of Jurisdiction, or the Use of the Keys, together with the Tythes, Offerings, and ancient Glebes. These were ever exempt from all Secular Impositions, till the Pope took upon him to demand Taxes from them, and gave leave to Kings to do the same, tho' not without

the Clergy's Consent in their Chapters or Convocations. The Temporal Revenues were, the Manors, Lands, and other Real Estates given by Men of Generosity. These were indeed subject to the three Taxations aforesaid.

C A H P. XVI.

Of Synods, Convocations, and other Publick and Authoritative Assemblies of the Clergy.

G*eneral, or Œcumenical Councils, or Synods,* are Assemblies of Bishops from all Parts of the Church, to determine some weighty Controversies of Faith and Discipline. These were first called by the Emperors, afterwards by Christian Princes, till, in the latter Ages, the Pope usurped to himself the greatest share in the calling of them, and, by his Legates, presided in them, when call'd. The first *General Council* was that of *Nice*, *Anno Dom.* 325. The second at *Constantinople* 381. The third at *Ephefus*, 431. The fourth at *Chalcedon*, 451.

A *National Synod*, consists of all the Archbishops, and Bishops within one Nation, Assembled together to determine any Point of Doctrine or Discipline. The first of this sort which we read of here in *England*, was that of *Herudford* (now *Hertford*) *Anno Dom.* 673. the last was that held by Cardinal *Pool* 1555.

Provincial Synods, consist of the Metropolitan, and the Bishops subject to him, which by the Canons of the Council of *Nice*, were to meet twice in the Year.

* *Diocesan Synods*, are the Assemblies of the Bishop and his *Presbyters*, to enforce and put in execution Canons made by *General Councils*, or *National* and *Provincial Synods*, and to consult and agree upon Rules of Discipline for themselves. See *Prov. L. 1. T. 2. L. 2. T. 7. Gloss.* and these were frequently held while the Bishop and Clergy liv'd together in a Community, and were not wholly laid aside, till by the Act of *Submission* (25 H. VIII. c. 12.) it was made unlawful for any Synod to meet, but by Royal Authority.

And since the great Divisions of Christendom, especially in the Western-Church, a *free Universal Synod* is scarce to be hop'd for.

Tho' *National Synods* are laid aside, yet upon any great Emergency, the Synods of our two Provinces of *Canterbury* and *York*, do act by

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* *The Reader ought to observe the different use of the Word Paræcia and Diœcesis in the ancient and present Church. In the ancient Church Paræcia denoted that Territory which belonged to any one particular Bishop, which we now call a Diocese. And of old, the Word Diœcesis denoted all those Provinces or Districts which were subject to one Patriarch or Archbishop, such as he of Alexandria, who tho' stiled Archbishop only, had the Power of a Patriarch. And a Synod called by such Patriarch or Archbishop, was called, of old, a Diocesan Synod.*

mutual Correspondence, and joint Consent, or by having Commissioners from the Province of *York* present in that of *Canterbury*.

And as often as a new Parliament is called, which is now, at farthest, once in seven Years, so often the Archbishops of the two Provinces, have each of them a Writ from the Crown to call a *Provincial Synod*; the first to meet at *London*, the other at *York*: From the Year 1661, to 1710, neither Synod hath pass'd any Synodical Act; and from that time till 1700, for the most part, they were only called, and very rarely did so much as come together, in a full Body, and with the usual Solemnity. 'Tis true, that during the Remainder of King *Charles* the Second's Reign, when the Office of Prolocutor was void by Death, or Promotion, so many of the Lower-House came together, as were thought sufficient to chuse a new one; and those Members that were about Town, commonly met, during Parliament, once a Week, had Prayers read, and were formally continued, till the Parliament was Dissolv'd, and the Convocation together with it. And even in King *James* the Second's Time, for ought I can learn, the Writs issued out of Course, but the Members did not meet. *Anno Dom.* 1689, after King *William* and Queen *Mary's* Accession to the Throne, a Convocation was not only called, but began to sit in due Form, the Bishop of *London* presiding, by reason that Archbishop *Sancroft*, and several other of the Bishops, were under a legal Incapacity of sitting in it: but the Event of that Meeting did not answer the Expectations conceiv'd of it, the Majority of the

he Lower House not relishing the Business on which they were call'd to consult; from that time till the Year 1700, they were only called, never met: But in that Year His Grace of *Canterbury* took a great Step toward restoring the antient Use of Convocations, for then, and ever since, at the Meeting of the Parliament, the Convocation of the Clergy has likewise been Solemnly open'd, and the Lower-Clergy have been permitted to form themselves into a House, and to chuse their *Prolocutor*; nor have they been finally dismiss'd so soon as that Solemnity was over, but continued from time to time, till the Parliament has broke up, or been dissolved. And now it seems to be granted on all Hands, that 'They are of Right to be assembled concurrently with Parliaments, and may come to many Preparatory Resolutions without a Royal License,' as the late Bishop *Beveridge* expresses it. See *Present State of Convoc.*

It is the peculiar Privilege of *English Presbyters*, that they have a Right to sit in Provincial Synods; I mean to sit as constituent Members, and so as to have a Right to vote in deciding Matters of Doctrine and Discipline, and whatever else comes before them; and are allow'd, in all conclusive Acts, to have a *Negative* on the Bishops: And 'tis the more reasonable they should have this Negative now, since *Diocesan Synods*, in which alone they were of old allow'd to vote, are wholly disused in *England*.

In Convocation those who are absent by Leave or Connivance, are allow'd to vote by Proxy: And the Bishops who hold lesser Dignities in *Commendam*, can constitute any Person

that is Member of the Lower-House to vote there as their Proxy, for such Deanries or Archdeaconries as they hold by *Commendam*.

This Assembly has Power to correct and depose Bishops, to examine and censure Heretical Books and Persons, to the doing of which, yet the Bishop's Council inform them the Royal License is necessary; yet the Majority of the Lower-House declare, that there are other Lawyers as eminent, who are of a contrary Opinion; agreeing the while, that such Royal License first obtain'd, they may enact and publish Canons, alter and reform the *Liturgy* and do whatever is necessary to support Religion, that can be done by a Spiritual Authority.

And, by *Stat. 1 Eliz.* not only what is contrary to the Doctrine of the four first General Councils, or of any other Councils in the express Words of Canonical Scripture, shall be deem'd Heresy; but such Doctrines, as shall hereafter be determin'd to be Heresy, by the High Court of Parliament, *with the Assent of Convocation*.

There has been an unhappy Dispute between some Writers, which is not yet determin'd not concerning any Point of Faith, Doctrine Worship or Religion, but, *Whether the Convocation can form or draw up a Canon, without License from the Crown*; it is agreed on all Hands, and the Act expressly says, That they shall not Enact or put in ure any Canon, without the King's Consent.

There are likewise several other Particulars which are, or lately were debated by the two Houses

Houses, viz. whether the Archbishop by his Schedule does absolutely * *continue*, that is, appoint the next time of Meeting for the *Lower House*, as well as the *Upper*. The whole *Lower House* do own, that they are bound to meet on the Day assigned in the Schedule; but the Majority do claim a Power of holding intermediate Sessions, before that Day come, if the Continuation be to a remote time; but the Majority of the Bishops say, that the *Lower House* have no Right to hold these intermediate Sessions, without the Leave or Appointment of the *Upper House*.

It has likewise been asserted, That the Archbishop's Schedule does not only appoint the next time of Meeting for both Houses, but does immediately separate the Members of the *Lower House*.

* *The Reader is desired to observe, that every Day's Meeting and Sitting, is, in the Language of Convocation, a distinct Session: 'Tis otherwise in the Language of our Parliament; for if they meet de die in diem, for three or four Months together, yet all is but one Session until the King do interpose, and put an end to the Session, by his Prorogation. But there is this great difference between a Prorogation in the Parliament, and a Continuation in Convocation; that the first breaks off all Business, so that every thing must begin de novo in the next Session; but 'tis otherwise in the latter, for by a Continuation, all Business is left in the same State: yet Continuing and Proroguing are the same thing in the Style of our English Synod, and are used as equivalent Terms.*

House, as well as the *Upper*, and makes it Criminal for them to continue sitting any longer that Day, after once the Schedule is brought down. The Majority of the *Lower House* have opposed this Claim of the Archbishop; and they who favour'd it have appear'd inclinable to come to a Temper in this Point; I mean, to grant that the *Lower House* may ordinarily sit on, after the Schedule is brought down, till the Business of the Day be ended, except the Archbishop send an express Order to the contrary. And from 1710, to 1714, the two Houses sat, together with the Parliament, and did Business upon this *tacit* Agreement.

Since that Time the Convocation was legally call'd and open'd, and hath sat so long as to draw and present an Address or two to the Crown. Nay, they were once qualified to enter upon Business by a Royal License sent to the Archbishop, and a Letter directing them to several Heads of Business (which yet did not come till several Months after the former.) The first Day of their entering on Business, was *May 3. 1717.* But the Business chose by the *Lower House*, (tho' very just and seasonable) was of such a Nature, as the Times would not bear. Therefore on the next Synodical Day, *May 10.* after the *Lower House* had made some Progress in that Affair, which they, and the main Body of the Clergy, whom they represented, had much at Heart, and ever will have so long as they know, and have any Regard to their own Character; the Convocation was prorogued by Royal Writ from that Day to *November 8.* following. And hath ever since

by long Prorogations been continu'd in a State of Separation.

And tho' it has been said, that the Power of *Continuing* or *Proroguing* is in the President only, when the Royal Authority does not interpose; yet His Grace's Schedule, and even his Speeches, do sometimes, if not always, intimate that the *Prorogation* is made with the *Consent of his Brethren* the Bishops: but when he Prorogues by Authority from the King, then the Bishops Consent is not, and cannot properly be ask'd. Other Questions disputed between the two Houses were,

Whether the *Lower House* have Power to give Leave of Absence to their own Members, without the Archbishop's Consent?

Whether a Deputy *Prolocutor* can be Substituted, without the Archbishop's Consent first had?

Whether the *Lower House* can send a Message to the *Upper*, by any but the *Prolocutor* only?

Whether the *Lower House* of itself, can admit or deny Proxies from absent Members?

Whether the *Lower House* be obliged to chuse Committees, or enter on Business at the Appointment of the *Upper*? Or, Whether the *Lower House* are wholly at their own Discretion in these Matters?

Whether the *Lower House* have any Precedent, whereby they can desire a *Free Conference* with the *Upper*? And whether the *Lower House* be not obliged to put their Reasons for dissenting from the *Upper House into Writing*, if the Bishops require them so to do?

Whe.

Whether the *Lower House* can enquire into Elections and Returns of Members to serve in their own House, without an Order from the Archbishop? Whether the *Lower House* have Power to appoint an *Actuary* or *Scribe*? Or, Whether their *Actuary* stil'd in their Book *Registrarius Assumptus*, be, in truth, no other than a Deputy to His Grace's Principal Register?

It has likewise been disputed, Whether Elections of Proctors for the Chapters, and Diocesan Clergy, should be made only by Virtue of the *Mandate* directed from the Archbishop to the Bishop of *London*, by him to the Bishop of every Diocese, or by an Execution of the Provincial Writ, and the Clause *Præmunientes* also.

For at the same time that there is a Writ from the King sent to the Archbishop to call a *Convocation*, Writs are likewise sent to every single Bishop to come to Parliament, *Præmunientes*, i. e. *Warning him to bring with him the Deans and Archdeacons within his Diocese, one Proctor for each Chapter, and two for the Clergy of his Diocese.* The *Convocation* for the Province of *Canterbury* is appointed to meet at *St Paul's*, the Parliament at *Westminster*, and formerly a Day or two before the *Convocation*, and the *Convocation* too is always removed to *Westminster*, after they have first met at *St Paul's*. Some are very positive, that the Election ought to be made by Virtue of the *Præmunientes* Clause, and that every Bishop should give his *Mandate* to the Archdeacons and Deans to proceed in their Elections, by Authority thereof; but the generality have and do proceed in Obedience to a *Mandate*, sent from the
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Archbishop to the Bishop of *London*, Dean of the Province, and by him to the rest of the Bishops, and by them to their Deans and Chapters, and Archdeacons to chuse Proctors to appear at *St. Paul's* in *Convocation*. Before the Reformation, sometimes Elections and Returns were made on both Writs, either by chusing the same Persons for both Purposes, or, on some Occasions, different Persons. However, this is agreed, that Proctors chose on either Writ, may serve the Ends of both. And that the Clergy of the Province of *York*, by meeting in that City, whether they are called by the Provincial Writ, are excused from coming to *Westminster*, to which Place they, as well as the Clergy of *Canterbury*, are summon'd by the *Præmunientes*.

And whereas by *Stat. 8 Hen. VI. c. 1.* it is provided, That the Clergy called to *Convocation* by the King's Writ, together with their Servants and Families, shall fully use and enjoy such Liberty, or Defence, in coming, tarrying, and returning, as the great Men, or Commonalty of the Realm do, or ought to enjoy. This Act has always been so understood, That Proctors, chose by the Provincial Writ, have been as safe from Arrest, as if they had been chosen by Virtue of the *Præmunientes*.

The Reason why the Clergy were thus doubly called was, to secure their Obedience, and the King's Authority. The prevailing Opinion among the Clergy then was, that they ought not to obey a Summons to *Convocation* from a Secular Person, tho' the King himself; therefore the Archbishop was, by the King, obliged to summons them, that they might seem to come
by

by virtue of their Canonical Obedience, and that the Archbishop might not be deprived of his Right of calling them; and on the other side, the King was willing to assert his own Power, of commanding them to appear, and therefore called them again by his *Pramuni-entes*, and perhaps some might be terrify'd into a Compliance, for fear of the King's Displeasure, who otherwise might have proved Refractory.

This is certain, the Clergy were drawn to Parliament against their own Inclinations, especially because the main End the King had in bringing them thither, was, not to give their Votes in making Laws or Matters of Civil Government, but to consent to the granting Subsidies, and the only advantage they had in coming, was to represent their Grievances, which sometimes they got redress'd.

Tho' the Lower Clergy were never let into a Share of the Legislature in Parliament, (save that sometimes their Assent has been required in Matters concerning the settling of the Succession of the Crown, and to such Laws wherein their Rights have been particularly concerned: *Rights of Conv. p. 62, 63, 376, &c.*) but only had Conferences Occasionally with the Temporal Commoners, about adjusting and proportioning their Subsidies; yet they who allow the least to them, acknowledge that they were by degrees received into the Provincial Synod, which before consisted only of Bishops and Abbots, and were permitted to give their Votes in all things that concern'd the Doctrine, Discipline, and Government of the Church, and have been for near 300 Years an essential part

the *Convocation*. At first, they sat in one room with the Lords Bishops, and when any affair was in agitation, which did particularly concern them, they retir'd into some place by themselves, and reported their Resolution to the Lords, by one or more Eminent Members. But Bishop *Kennet* doth allow, that by the beginning of the Fifteenth Century they began to be a distinct House, and to have a settled *Prolocutor* regularly chosen at the beginning of *Convocation*: The first of whom (says he) was the famous *Lyndwood*.

But in the Province of *York*, the Bishops and other Clergy, do still sit in the same House: therefore I do not understand what the Author of the *Additions to Cambden's Britannia* means, when he says, that the Bishop of *Man* is allow'd to sit uppermost in the Lower-House of *Convocation*. *Pag. 1070.*

The first occasion of calling the lower Clergy to *Convocation* now ceases: For whereas to the Year 1663, the Clergy, for their Church Pre-eminents, and all the Lands which belong'd to them before the Statute of *Mortmain*, were taxed by themselves only in *Convocation*, and their Grant down to *Henry VIII's* Reign, was confirm'd only by Royal Assent; (but since that Time, by the Authority of the Two Houses of Parliament, for the most part): Yet now, and ever since 1663, they have dropt the ancient Right of taxing themselves, and have had Taxes laid on them by Parliament, as all other *English* Subjects. In the first Act, whereby the Clergy were taxed by Parliament, *Anno Dom. 1664*, there is an express *Salvo* for the Rights of the

the Clergy ; from whence many do infer, that they are still at liberty to reassume this ancient Practice ; but if they should do so, whether it will prove an Ease, or a Grievance, a Privilege, or a Hardship, I will not pretend to determine. Since they have been Taxed by Parliament, they have been allow'd to vote in chusing Knights of the Shire, as other Freeholders, which in former Times they did not.

Only Parsons, Vicars, and perpetual Curates, are capable of giving their Votes in chusing *Proctors* for the Diocesan Clergy.

In the Province of *Canterbury* there are only two *Proctors* return'd for each Diocese. In those Dioceses where there are several Archdeaonries, two are nominated by the Clergy of each Archdeaonry, and out of these, two are chosen by the Bishop to serve as *Proctors* for the whole Diocese : Or the several Archdeaonries do by Turns chuse two *Proctors*. But in the Province of *York*, two *Proctors* are sent to Convocation from every Archdeaonry, otherwise the Number would be so small, as scarce to deserve the Name of a Parochial Synod. By this means it comes to pass, that the Parochial Clergy have as great an Interest in Convocation there, as the Cathedral Clergy. Whereas, in the Province of *Canterbury*, the Lower House of Convocation consists of 22 Deans, (taking in *Westminster* and *Windsor*) 24 *Proctors* of the Chapters, 53 Archdeacons ; to counterballance all which, there are but 44 *Proctors* for the Parochial Clergy, which do not make one third part of the whole Body : A very disproportionable Representation : So that the In-

cum

Incumbents of this Province, who are the main Body of the Clergy, have, in effect, no Interest at all in the Lower House of Convocation, if any Dispute arise there between them and the Cathedral Clergy : For what are 44 to 99 ?

Besides the Assemblies already mentioned in former Times, the Archdeacons had their *Capitula*, or *Chapters*, to which the Clergy within their Jurisdiction were called ; not to make Canons or Orders, but to communicate such Directions to the Clergy as the Bishop thought proper, to consult of Church Matters, and to examine and instruct the Clergy. *Prov. L. i. T. 10.*

In former Ages, the Rural Deans did likewise hold their Chapters, which consisted of the Incumbents, and other Clergy within their several Districts, every three Weeks ; and had likewise their principal Chapters once in three Months See *Lynd. in Gloss. on Tit. Quia Incontinentia.*

C H A P. XVII.

Of Visitations and Procurations.

BEFORE the Conquest, it does not appear, that there were in *England* any Visitors but the Bishops, who were obliged annually to go about their Dioceses, to enquire after and correct Mis-carriages : And this was less difficult, when the Parish

Parish Churches were not so numerous as afterwards. See *Bp. Stilling. Eccl. Cases*, p. 145.

The *Norman* Bishops did by degrees let Archdeacons into a considerable Share of that Business, which before was thought peculiar to themselves, and the *Chore-episcopi*, (which last Officers are now universally laid aside;) and the Visitation of every particular Church being a Business that requir'd much Time, and Travelling, this was chiefly left to the Archdeacon.

The Bishops did indeed, long after this, personally visit Monasteries, Collegiate, and other Churches within their Jurisdiction, that were capable of entertaining their Retinue, in which there was not less than Twenty or Thirty Horses and Men, so many the Canon allow'd every Bishop in his Visitation; but as for the lesser, and more remote Parish Churches, they visited them only (as they now do) by summoning their Incumbents, and other Clergymen, and credible Witnesses out of every Parish, to some convenient Place, at a reasonable distance from their Home: And of these credible Persons enquiry was made upon Oath concerning the state of the Church, Parsonage-House, &c. *Lyndw. in cap. Statuimus, v. Viros fide dignos.*

Anciently Bishops took more Time to make their Visitations in, and when they visited a Rural Deanry, cited not above four Churches to one Place, in one Day, and in each Parish six or eight, to answer to such Interrogatories as should be put to them, that the Bishop might have an exact understanding of his Diocese. But now the Manners of the Clergy and Laity being so much mended, fifty or sixty Churches

can be dispatch'd in one Day, since most of the Churchwardens return *Omnia bene*.

And so generous were the *English* Bishops in the Time of *Athon* * the Glossator, in the 13th Century, that they demanded no Procurations from their Clergy, when they visited them in this manner; tho' some Lawyers, it should seem, were of Opinion that they were due. See *Consl. Othob. Naturalis, in Gloss.*

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* Joh. de Athon, the Glossator, liv'd in the 14th Century; he was Prebendary of Lincoln, and Doctor of Laws, as himself says, in the Preface to his *Glosse*. Bale and Pits led Dr. Duck into the Error of his being that Magister Atto, Clerk to Cardinal Otho, who (we find in Grost-head Epist. 74. in Fascicul. rer. expetend. Vol. 2.) was commended to a Prebend in the Church of Lincoln, in the 13th Century, whose Name they say was Aeton, and corruptly called Athon. But upon perusal of the Registry at Lincoln, I find that one Joh. de Athon was admitted Prebendary there, 1329. Regist. Burgherlh. and that he had a Commission to take an Accaunt of the Administration of Hen. de Mammesfeld, late Dean there, 1347. And that he was Prebendary of Welton Rival in that Cathedral, and died about 1351. Regist. penes Decan. & Capit. Linc. In his *Gloss.* printed at Oxford, p. 129. he calls Venerabilem patrem dominum Joh. de Stratford Doctorem suum nuper Winton. Episcopum, jam vero Cantuariensem, (which John Stratford was Archdeacon of Lincoln, while he was Prebendary there) which shows the Glossator liv'd not in the 13th, but in the 14th Century.

There was the less occasion for Bishops to visit every single Church in Person, when the Archdeacons were obliged to do it *once in three Years, and might visit every Year, and oftner if there was a necessity.* *Pro. L. T. 10. Gloss. in 2. Visitatione.* A most pious and excellent Discipline; which if it had been kept up, Churches and Parsonage Houses had been in much better Condition, than now they are in many places.

And there was no great danger of their being too frequent in their Visits, since all the Advantage they receiv'd by it, was, that they themselves, with five, six, or at most seven Horses and Men, were modestly entertain'd by the Incumbent of the visited Church: The Entertainment was called a *Procuracion*: Or if the Incumbent thought fit, he gave 7*s.* and 6*d.* in lieu of the Entertainment; *viz.* 1*s.* 6*d.* to the Archdeacon himself; 1*s.* to each of the other six: And if the Archdeacon visited more than one Church in the same Day, he could receive no more than 7*s.* 6*d.* of all the Incumbents, whose Churches were that Day visited. See the *Constitut. of Archbishop Stratford, Prov. L. 3. Tit. 22. Quamvis Lex.*

Farther, There were several Canons made, that "no Procuracion should be paid to the Archdeacon, if he did not visit in Person: "that if he sent his Official, nothing should be given but an Entertainment, or a moderate Compensation for it," And Archbishop Langton, tho' he had an own Brother for his Archdeacon, yet made an excellent *Constitution* for the keeping up this *Personal Visitation*, ending thus: *Let them (the Archdeacons) not presume*

to take a Fee for not Visiting. L. 1. T. 22. c. ut
singula.

However, by degrees, in most places, by general consent, *these Fees* were paid, notwithstanding this *Constitution*; and instead of a *Visitation*, the Archdeacon by himself, or his Official, at two of his *Chapters*, held about *Easter* and *Michaelmas*, made an Enquiry into the Circumstances of every Parish, and continues so to do; and this Enquiry began at last to be called a *Visitation*, and these Fees, *Procurations*.

And as the Archdeacon held this *Capitulum*, or *Chapter*, and *Visitation*, as it is now called, at the same time; so the Bishop held his *Dioceſan Synod*, and visited all at once: From whence it is, that *Procurations* are sometimes called *Synodals*. These *Synodals* may now in some places be due to the Archdeacon, by Composition with the Bishop. *Godolph. cap. 9. sect. 8.* For Bishops too have, for many Ages, received these *Synodals* or *Procurations*: but now these Assemblies are only to make Enquiry into the Neglects of Clergy and People; and it often happens, that both Bishop and Archdeacon hold these Assemblies in the same Year, and both have *Procurations* paid them: Of which see *Lyndw. in Gloss. ad L. 3. T. 22. ubi supra, v. Visitatione.*

But it must be acknowledg'd, that these Payments are for the most part very moderate; and that a Personal Visitation from the Archdeacon once in three Years, would be a greater Expence to the Clergy, if they were every one to entertain him and his Retinue a Day and a Night,

Night, as of old, than is now paid to him in lieu of *Procreations*, in three Years time.

It is said by some, that *Procurations* are due to the Archdeacon yearly, tho' he do not Visit because by the 33 *Hen. VIII. cap. 5.* they seem to be made Penfions, where paid by Impropritors : And from hence they infer, that they are not now due, *Ratione Visitationis*, but by Act of Parliament. *Godolph. cap. 9.*

Sir *Simon Degg* labours hard to prove, that Archdeacons have no Right to *Procurations* that Year the Bishop Visits. *Parf. Counsel. L. 2. c. 1.* And yet if the Law allow that to be a *Visitation*, which is now commonly so called ; and if there be no Canon forbidding the Archdeacon to visit the same Year, after the Bishop's Inhibition is relaxed, (and I declare I know of none) then why may not the Archdeacon Visit the same Year ; and if Visit, why not receive *Procurations* ?

C H A P. XVIII.

OF CHURCH-WARDENS.

IT has been before observ'd, that Bishops in their Visitations summon'd credible Persons out of every Parish, to give an Account upon Oath of the Condition of their Church and Parish ; but by degrees this Care was devolved on the *Church-Wardens*, which were standing Officers long before chosen in every Parish, the

described by *Lyndwood, L. 1. T. 10. c. Archidiacon.*
Subpœna, in these Words; viz. *Guardiani*
Ecclesiæ ad hujusmodi reparationem faciendam,
et alias ad bona Ecclesiastica disponenda electi.
And as personal Visitations began to be laid
aside, and the Custom of repairing Churches at
the joint Charge of the Parishioners here in
England came to be establish'd (as it was in
Lyndwood's Age, viz. the beginning of the 15th
Century, and even in *Atton's* who lived in the
foregoing Century) this Office became still
more necessary. It is thought that the *Jura-*
tores Synodi; or *Testes Synodales* mention'd by
Foreign Writers in the 9th Century, came to
those Meetings to inform the Bishops against
those that were Delinquents against the Law of
the Church; and that from hence our Quest-
Men, who are Assistants to the *Church-Wardens*,
are called *Side-men*, qu. *Synod-men*.

Presentments are to be made by the Church-
Wardens and Side-men, if any be of Custom
chosen, twice in the Year, and oftner if they
see occasion; only in places where they use to
present but once, that Custom shall remain.
Four Pence shall be paid for each Presentment,
made by Custom, once or twice in the Year,
nothing for any other voluntary Presentment,
Can. 116. If it appear that they do willingly
omit to present any Crime, they are to be
proceeded against in Ecclesiastical Courts, as
perjured Persons, *Can. 117.* *Easter* is to be
one of the Times of presenting; and the Pre-
sentments are then to be made, not by the new
Church-Wardens, but the old, *Can. 118.* And
the new Church-Wardens, when they are

170 *The Clergyman's Vade-Mecum.*

“sworn, may demand a Book of Articles
 “whereby to form their Presentments which
 “they are to make at the next Visitation.”
Can. 119.

“Ministers may join in their Presentments
 “or they may forbear, at their discretion: Or
 “they may themselves present publick Crimes
 “if the Church-Wardens will not.” *Can. 113.*
 “By *Can. 89.* Church-Wardens are to be cho-
 “sen yearly, by consent of Minister and People
 “if it may be; if not, the Minister is to chuse
 “one, and the Parishioners another.”

But it has often been determined by Temporal Judges, that where Parishioners have a Custom to chuse both, they shall continue so to do the Canon notwithstanding. For nothing but an Act of Parliament can alter a Custom. See *Godolph. c. 9.* But if by Custom the Minister chuse one, and the People another, this Custom is good. *Godolph. ibid.* And tho’ in some Places there be a Prescription for Church-Wardens to continue in Office two Years, yet they are removeable at pleasure, by chusing new ones, *Watf. c. 39. p. 305.* And therefore the Parishioners cannot bring an Action against the Church-Wardens, yet the Minister and Parishioners may, at pleasure, chuse new one who may sue the old ones to Account. *Ibid.*

But here it is to be observ’d, That no Peer, Clergyman, Parliament-Man, Servant to the King in Ordinary, Lawyer or Attorney, Physician or Surgeon, nor Apothecary, by Statute 6 *W. III.* (and continu’d by *Stat. 1 Ann. c. 1* for eleven Years, and to the End of the next Session of Parliament) Teachers or Preachers

Dissent

Dissenting Congregations, by *Stat. 1 W. M. c. 6.* Register'd Seamen, tho' not in actual Service, by *Stat. 7, 8 W. III. c. 21.* nor any one who has prosecuted a Felon to Conviction, by *Stat. 10, 11 W. III. c. 33.* can be obliged to execute the Office of Church-Warden. It does not appear but that any of these may execute that Office, if they be duly chosen, and willing of themselves to perform it: Yet I suppose there is one Exception to be made, I mean, that of a Clergyman; for tho' a Doctor of Divinity hath lately asserted in Print, that a Curate is capable of the Office of a Church-Warden, yet I don't believe that he has convinc'd any one, that his Opinion is right.

If a Dissenter, who scruples the Oath, be chosen Church-Warden, he must procure a *Deputy who shall comply with the Laws in that behalf: Such Deputy to be allow'd and approv'd, as such Officer himself should have been.* See *Toleration Act.*

The Pews, Bells, Surplice, Chalice, Books, Organs, Cloths, &c. belong to the Church-Wardens, and if they be taken away, or broken, the Church-Wardens have an Action at Common-Law against him that did it. *Ibid.* 302, 303.

Church-Wardens are a Corporation, and therefore they must sue, and be sued jointly. In London, the Parson and Church-Wardens are a Corporation, for purchasing and receiving Grants of Lands, as well as Goods. *Godolph. 13. sect. 5.*

But it is said, that Church-Wardens in other Places are not a Corporation * to receive Lands for the Benefit of the Church, but Goods only; and they cannot dispose of Goods, without the Consent of Vestry and Sidemen. *Godolph. ibid. sect. 17, 18.*

The Reverend Archdeacon *Prideaux* is of Opinion, that Church-Wardens, with the Consent of the whole Parish, cannot sell any thing without License of the Ordinary: And his Reason for it is very strong, *viz.* That by this means they may leave the Church destitute of all Ornaments, *to save their own Pockets, p. 34.* And I think another Reason may be added, *viz.* That what has been dedicated to the service of GOD, is not, in strictness, the Property of the Parishioners, nor, consequently, at their Disposal.

Therefore any Man may dedicate Goods to GOD's Service, in such a Church, by delivering them into the Hands of the Church-Wardens, and thereby the Property is immediately changed. *Parf. Counf. p. 148.* Therefore I can see no just Cause why the License of the Ordinary should be necessary to empower the Church-Warden to receive any Ornament voluntarily given to the Church: Nor do I find, that they who say it, have any Authority for it. But Lands intended

* By Stat. 23 H. VIII. c. 10. *All Grants of Lands and Hereditaments, made in trust to the use of Church-Wardens, tho' but for term of Years, is void; because they are not Corporations (that is, Incorporated by Royal Patent) but made by Consent of the People.*

Intnded for this Use must be settled in certain Persons, and their Heirs by Feoffment.

He that shall steal a Winding-Sheet from a Dead Corps is guilty of Felony, but must not be sued in the Name of the Incumbent, or Church-Wardens, but of the Executor, or him who buried the Corps. *Watf. p. 304.*

So he that shall break a Grave-stone, or Coat of Arms, is liable to an Action at Law from the Executors. *Parf. Couns. p. 147.*

A Church-Warden may prevent any Disorder or Irreverence in time of Divine Service, by whipping Boys, or taking off the Hats of those who would keep them on. You may see this proved in *Watf.* by Precedents out of the Common Law, *c. 34. p. 266.* Such Persons may be Presented, or Indicted, and be bound to keep the Peace, who are guilty of any Disorder in time of Divine Service. *Ibid.* And observe, that by *Stat. 1 Eliz. c. 1.* He that does not *behave himself orderly and soberly during Divine Service*, is as liable to the Forfeiture of Twelve-pence, as he who absents himself from it.

A Church Sess is more properly and legally made by the Church-Wardens, and the majority of the Parishioners; therefore the Parishioners are first to be summoned to a Vestry, in order to make a Tax; and if the Parishioners refuse, the Church-Wardens may do it themselves. *Watf. c. 39. p. 302.*

Sir S. D. is of the same Opinion, and gives good Reason for it: But adds, "some are of Opinion that Church-Wardens cannot proceed alone, but must compel the Parishioners to do it by Ecclesiastical Censures, *p. 137.* that is, 1 3 "they

“ they must present the Parishioners that refuse,
 “ to the Ordinary, to be dealt with according
 “ to the Laws Ecclesiastical.”

Some would persuade us, that a Church-Self is not good till confirm'd by the Ordinary; because a Poor-Self is not so without the Approbation of the Justices of the Peace; but the general Practice of all Places, that I know, confutes this Pretence: Nor is there any Law, or Canon that requires the Consent of the Ordinary in this Case.

Church-Wardens are accountable to the Minister, new Church-Wardens and Parishioners, for Goods and Money by them received for the Use of the Church; and if they do not give up their Accounts accordingly, within a Month after they be out of Office, as the 89th Canon directs, they may be compelled to do it, upon Complaint made to the Ecclesiastical Judge. But after they have accounted to the Minister and Parishioners, and have their Accounts accepted by them, the Ecclesiastical Judge cannot, *ex Officio*, call them to Account before him. *Godol. c. 13. sect. 19.*

As for Books, and all necessary Ornaments, the Wardens may buy them if they are wanting, or renew them, if they are decay'd, without any consent of Vestry: And they may make any necessary reparation of the Edifice, without asking any Leave: And whatever does, or has belong'd to the Church, tho' it be meerly for Decency or Curiosity, yet may be renew'd by the Wardens, without consent of the Parishioners, unless it have been out of use for above forty Years; for, by the Practice of the Spiritu-
 al

Courts, forty Years breeds a Prescription for, or against any thing : But if any thing, not expressly requir'd by Rubric, be to be purchas'd, or erected, it cannot be done without consent of the Majority of a Vestry. Church-Warden, or other Person appointed by the Ordinary, is to shut up the Parochial Library on the Death of the Incumbent : By *Stat. 7 Ann. c. 14.*

P E W S.

The Ordinary, in most Places, has Power to dispose of the Seats in the Body of the Church, if Complaint be made to him. And yet it has been said, that the Parson and Church-Wardens have this Power ; that is, as Dr. *Watson* argues, in case Complaint be not made to the Ordinary. But, by Custom, the Church-Wardens may have the disposal of the Seats, as in *London, C. 39. p. 296, 297.*

Church-Wardens may pull down Pews erected, without License from the Ordinary, but not cut any Timber. *Watf. c. 39. p. 300.* But Sir S. Degg says, That neither Church-Warden, nor any other can do it, without leave from Parson or Ordinary, *p. 143.*

If thro' the Increase of Inhabitants more Pews, or Galleries be necessary, yet 'tis agreed, that Church-Wardens cannot erect them of their own Head. Some say, it cannot be done without License of the Ordinary ; but they give us no good Reason or Authority for it. If, indeed, there be a Dispute, whether more Pews are necessary, or where they shall be placed, 'tis clear the Ordinary is sole Judge in the Case : But

if the Incumbent, Church-Wardens, and Parishioners do unanimously agree, that more Pews are necessary, and that they shall be fixed in such a Place, I can see no Occasion for the Ordinary's concerning himself in the Case; for what need is there of a Judge, where there is no Controversy? If indeed a Pew be by consent of Parson and Parish erected in a Place, where it ought not, no doubt the Ordinary, when it comes to his Knowledge, may remove it, unless it have so long stood there, that a Prescription can be pleaded.

In a word, If Pews, or any thing else, newly purchased or erected, be for the Convenience of the People, and the decorum of the Divine Worship, what an Ordinary must he be, that will oppose it, for no other Reason, but because the Church-Wardens are not willing to enflame the Account, by being at the Charge of a License? And if it be inconvenient or indecent, or injurious to any of the Parishioners, the License signifies nothing; for it may be set aside by a superior Ecclesiastical Judge, or by the Successor of him who granted it.

'Tis very singular in a late Writer to distinguish in this Case between what is added in the Church, and what is added to the Belfrey; as if the Clock, Bells, &c. were not in the Church, or belonging to it, and under the Inspection of the Ordinary, as much as the Pews, and Rails of the Communion-Table: But the Gentleman was aware, that by a noted Common Law Case the Majority of the Parishioners may enable the Church-Wardens to buy a fifth Bell, where there were four before, (*See Chap. IV.*) lest any one should

Should from hence infer, that by Parity of Reason they may enable him to set up Rails, Organs, Pews, &c. without License from the Ordinary; He makes a Distinction betwixt things in the Church, and not in the Church: as if the Steeple were no Part of the Church. Such Distinctions as these, made visibly for no other Purpose but to bring Grist, have done more hurt to the Ecclesiastical Courts, than all the Attempts of their profest Enemies.

Of common Right, the chief Seat in the Chancel belongs to the Parson; yet, by custom, another may have it, as belonging to his House; and *Watson* argues, That the Ordinary has Power of Right to place in the Chancel, as well as Body; but owns, that the Law is settled to the contrary. *Ibid.* 301, 302.

But Chapels, Chancels and Isles, built or repair'd time out of mind by Noblemen or others, are for the sole use of them and their Families. And it has been adjudged at Common-Law, that any Person has Right to sit in a Pew repair'd by himself, and those whose Estate within the said Parish he now possesses, time out of mind. Nay, *Sir S. Degg* asserts that an Owner of a Messuage may prescribe to have a certain Pew in the Body of the Church, tho' he had not used to repair it: And adds, that it has been so settled by all the Judges in *England*, p. 145. And some are of Opinion, that the Ordinary may appropriate Seats to Houses, tho' not to Persons, and their Heirs. But *Quære*,

'Tis, I think, allow'd on all Hands, that the Ordinary may appropriate a Place in the Church

to any Person, so that he does not give it to his Heirs also. See *Parf. Counf.* p. 143, 144.

A Person by Prescription may have Right to the upper, second, or third Place in a Pew. But in case of a Controversy, the Bishop or Ordinary may inhibit them from making a Disturbance, till the Right be try'd at the Common Law. *Watf. Ibid.* 298.

I have reason to believe, that before Henry the Eighth's Time there was no Pews in Churches except for some great Persons indeed, and Benches for Aged Lame Persons. The Seats that were, were moveable, and the Property of the Incumbent, and so in all respects at his disposal. Many Wills of Incumbents are to be seen, whereby they did of old bequeath the Seats in the Church to their Successors, or others, as they thought fit. I find no mention of them in the Constitutions collected by *Athon* and *Lyndwood*; but the latter in his Gloss on *Winckelsey's* Constitution, *ut Parochiani*, speaks of *Seats to be provided or repaired* by Church-Wardens: I suppose, for lame impotent Persons. The Constitution of *Gray* Archbishop of York, obliges the Incumbent to find Seats for the Chancel; these were for himself and Clerks when they sung their Hours. See *Spelm.* v. 2. p. 292. The Common Law Books mentions but two or three Cases before this time, and those relating to the Chancels, and Seats of Persons of great Quality.

If Rails be to be erected in the Chancel, the Consent of the Parson is necessary: And if the Parson be of the Clergy, there can scarce be any doubt, but his Consent may be easily obtain'd;

or

or if he be a Leassee, tho' he be not willing of himself, yet he may be obliged to it by the Bishop, Dean, and Chapter, or Body, when he comes to renew his Lease: but if the Fee be in himself, there is no way, but to depend on his Courtesy. This I speak, upon Supposition, that the Rails are to be fasten'd into the Freehold: for I suppose there can be no doubt, but that as the Parishioners have a Right in most Places, by Custom, to receive the Communion, Marry, and in some Places, to hold their Vestries in the Chancel; so they have a Right to place all such things there, as are necessary or proper to those Ends; and why they may not have moveable Rails there, as well as a Table, I can see no just Cause. Generally there are in every Chancel Pews fasten'd to the Freehold, for the Use of the People when they Communicate; and whether these may not, at the Discretion of the People, be changed into Rails, I leave to the Learned in the Law to determine: But, if I was Church-Warden, I should presume that my Ordinary was consenting to the having Rails, as to be sure he is, if he be one that has any regard to the Decency of Worship; and therefore should think it sufficient to ask the express Consent of Parson and Parishioners, or the Majority of them. And if the Ordinary be never so much disposed to remove Pews or Rails, erected without his License, yet there is no great Fear of his coming to the Knowledge of it, unless it be a Church in which he keeps his Visitation; for he rarely looks into any other: and there is no great fear, that the Parishioners that do oppose it, will go to the Ecclesiastical Court for Redress.

dress: for they know well enough, that all the Relief to be had there, in case they have a Majority against them, is, that a License will be put upon the Church-Wardens, and so the Charge be encreased.

C H A P. XIX.

Of Church Censures.

THere are some Censures, to which Laymen, as well as Clergymen, are subject, viz.

I. *Suspensio ab ingressu Ecclesiæ.* So by the Constitution of Archbishop *Stratford*, the Archdeacon, in some Cases, was to be suspended from going into the Church, L. 3. T. 6. * Item quia: So by Stat. 5, 6, *Edw. VI. c. 4.* the Ordinary is directed, if any Man quarrel, or chide, by Words only, in any Church, or Churchyard, to suspend every Person so offending, from going into the Church for so long a time as he shall think fit.

This Censure was inflicted by the Constitution of Archbishop *Sudbury*, *Confessione*, on all that receiv'd not the Holy *Eucharist* at *Easter*. *Lyndwood* in his *Gloss.* put the Question, who should inflict this Censure, and Answers, 'That there is no Occasion for the Ordinary to pass Sentence, the Curate may do it.

II. Excommunication, which is either,

1. *Excommunicatio Minor*, was a Sentence introduc'd in the XIIIth Century, to be pass'd on those who knowingly convers'd with those, who were by Name excommunicated, and when there was no Necessity for their so doing. I do not find any certain Proof that it was ever used in any other Case. *Lyndwood* asserts, 'That it was grown out of Use in the Ecclesiastical Court, in his Time; and that Interdict had succeeded in its Stead.' Where by the Word *Interdict*, he must mean prohibition laid on particular Persons against going into the Church. There is no Reason to suppose that it hath been restor'd since *Lyndwood's* Time. See Lib. II. T. 6. c. *Evenit. v. Interdict*. By this Censure Men were depriv'd of Sacraments, and Sacramentals only.

2. *Excommunicatio Major*, is that Sentence by which Men are depriv'd not only of Sacraments, and Sacramentals, but of all Communication with Christian Men, without the Church, as well as in it. But it is to be observ'd, that by the Practice of our Church in latter Ages, Men are actually depriv'd only of Sacraments and Sacramentals, and of Entrance into the Church, by virtue of this Sentence. They are not depriv'd of Communication of Christian People (otherwise than in the Church) till they have remain'd three Months under this Sentence, without seeking the Benefit of Absolution, (according to the 65th of our present *Canons*) and till others be admonished to avoid

avoid their Company and Society, by a public Denunciation to be made, not only in the Parish, but in the Cathedral Church. So he who is excommunicated for preaching Heresy is not depriv'd of Conversation with Christian People, till he hath a second time been guilty of that Crime, tho' he was excommunicated for the first Offence. * But the Person thus excommunicate, is liable to be taken up by a *Capias*, before he is depriv'd of Conversation of Christian People; if he do not reconcile himself within forty Days, to be reckon'd from the Time of the first Denunciation in the Parish Church. And if that Writ might not be executed before the second Denunciation, it would now not be executed at all. For I never knew any such Denunciation made, nor consequently any Prohibition of communicating *extra Ecclesiam* with Excommunicates. It was the Neglect and total Disuse of this Prohibition that led others, as well as myself, into an Opinion that an Excommunication in our common Form is of the lesser Sort. For we could not see how Men under a greater Excommunication might be convers'd with as freely as others, which yet we see commonly done without Censure, or Controul. But it seems evident, that the lesser Excommunication is wholly thrown out of Doors, and that therefore there is no other in being but what was of old called the *Greater*: and is so still in the Eye of the Law. And it is a Maxim with the *Canonists*, that *Excommunicatio*, if the

Word

* See Arundel's *Constitut. Reverendissim.*

Word *Minor* be not added to it, imports the *Greater*: And that if a Judge say, *I excommunicate John, or James*, it implies the greater Excommunication. But let it be observ'd, that this is still in effect a lesser Excommunication, tho' it be a greater in the Eye of the Law. For it does not actually deprive Men of Christian Society out of the Church till it hath been denounced a second Time, and in the Cathedral Church; which is now scarce ever practis'd. But it subjects Men to the Writ, *de Excom. Capiendo*, by Stat. 1 H. V. c. 5. and 5 Eliz. c. 23. And a Person taken by virtue of this Writ is Bailable only by the Court of *King's-Bench*, not by Sheriffs, or Justices of Peace. *Godolph. c. 42. §. 25.*

In many Cases, and for many Crimes, Offenders are said to be Excommunicate *ipso facto*. *Lyndwood* says, there are 175 Cases mention'd in the *Provincials* only, in which Men are said to be so; and by Statute 5, 6 Edw. VI. *He that smites, or lays violent hands on another in a Church, or Church-yard, shall be deem'd ipso facto Excommunicated.*

It has been disputed, whether Persons, who are by Law, or Canon, *ipso facto* Excommunicated, do fall under that Sentence, before they are cited by the Ordinary, and have the Fact proved against them, and they are denounced Excommunicate in *Ecclesiastical Courts*.

Now the Judges have declared, that Excommunication takes no effect, as to the Common Law, till it be denounced by the Ordinary and Curate of the Place where the Offender lives; no, not when such Excommunication is decreed by

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by Act of Parliament, as by the aforesaid Statute of *Edw. VI.*

If the Fact be not notorious, or evident beyond Exception, it must be proved, and the Sentence pass'd in *Ecclesiastical Court*, before the Criminal is taken for Excommunicated *in foro Ecclesiæ. Lynd. L. 1. T. 2. Gloss. vers. finem.*

Yet the Excommunication takes place from the committing of the Fact; and the Criminal is pronounc'd not only *Excommunicatum esse*, but also *fuisse*. And Orders taken, or any Thing else done in the Ecclesiastical Court in favour of them, since the criminous Fact, shall be of no Advantage to them.

And if the Fact were notorious, and the Punishment provided against it *Excommunicatio major ipso facto*, yet the Offender was to be publicly declared Excommunicated, before it could be criminal for other Persons to converse, or deal with the Person *ipso facto* Excommunicated; but then it was sufficient for the Curate of the Parish to denounce the Excommunication, without any special Order from his Superior. *L. 3. T. 28. vers. fin.*

But still the Offender is to be deem'd Excommunicate, before such Publication made, otherwise there will be no difference between *Constitutio Sententiæ latae*, and *Sententiæ ferendæ*. And the Canonists do say, That *Excommunicatio ipso facto*, is *Excommunicatio facta nullo Ministerio hominis intercedente*. So a Church to which a Clerk is Simoniacally presented is void, and the Presentation is null, *ab initio*, tho' it be not declared so till many Years after.

The Use I would make of this, is, that Persons notoriously, and, beyond doubt, guilty of any Crimes : as for Instance, Leaders in Schism, or Popery, for which Excommunication *ipso facto*, is decreed against them by the Canons of the Church, are really Excommunicated, tho' they be not particularly by Name publish'd, or declar'd to be so. And that therefore a Minister may refuse to bury them, if they die in this Condition, *and no one be able to testify of their Repentance.* For such Persons are declared, *ipso facto*, Excommunicated, by *Can. 2, 3, 4, 5, 9.* And that the Excommunication here meant, is *Excommunicatio major*, appears by this Rule of the Canonists, *Excommunicatio simpliciter prolata intelligitur de Majori* ; and because *they cannot be absolved but by the Archbishop* : See the Canons abovesited. And therefore I cannot understand upon what Reason, or Authority some Clergymen do permit some such Persons occasionally to receive the Communion, when they are really Excommunicated, and ought not to be permitted to come within the Church Doors.

The 68th Canon does indeed require Curates to bury all that are not denounced Excommunicated, *Excommunicatione majori* ; but if we may believe the Canonists, 'tis a sufficient Denunciation, if it come to the knowledge of the Person Excommunicated. *Lynd. in Gloss. L. 3. T. 28. c. Sect. Princip. v. Excommunicati.* So that the Curate who has taken care that his Parishioners, who are Promoters of Popery and Schism, be made sensible, that they are Excommunicated by Canon, seems to be under no Obliga-

ligation to bury them when they are Dead; and so, if these Excommunications, and the multitude of the Offenders, have no other Effect in this World, yet they may at least serve to indemnify a Clergyman for not doing so absurd a thing, as to bury the Corps of one, who has (perhaps) renounced his Baptism; or, however, dy'd in a profest Hostility against the Church, or obstinately Impenitent in any notorious Crime,

I find much Objection made against this: But I am not at all sensible of one Argument among a great many Words used on this Occasion. The Opponents don't observe the Difference between being Excommunicated, and being declared Excommunicate. I don't wonder that Divines mistake in this Point, when the Practitioners in our Courts have drop'd not only the old Practice, but the very Notion of an *ipso facto* Censure. But our Temporal Courts, tho' they first took the Term from the Ecclesiastical Lawyers, have preserv'd the true Meaning of it. They deny any Sentence to be necessary, when an *ipso facto* Deprivation is incur'd. I am not at all sorry that our Ecclesiastical Courts have lost the true Notion of an *ipso facto* Excommunication, but rather wish, that there had never been any such thing. I judge it abundantly sufficient for any Clergyman to justify himself for refusing to bury the Corps of a Dissenter, to allege the Maxim of the Canon-Law, *Quibus non Communicavimus vivis, nec Communicamus Defunctis.* Decretal. Lib. III. T. 28 c. 12. See also Bishop Gibson's Code. p. 540.

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However, the Clergyman may observe, that he is bound to bury neither *Papist*, nor any one else, except *due warning be before given*, *Can. 68.* Indeed the Canon Law looks on such as do not receive the Communion at *Easter* to have *Excommunicated themselves*, and therefore forbids them *Christian Burial*. See *Constit. of Archbishop Sudbury, Confessiones inter.* Bishop Gibson, in his *Code* says, *This became the Law of our English Church*, p. 541. And he affirms them who die in Duels to be deny'd *Christian Burial* by ancient Canons.

The two oddest Clauses surely that ever met together in one Act of Parliament, are those 3 *Jac. I. c. 5.* by the former of which it is declared, that every *Papist convicted shall be reputed, to all Intents and Purposes, as a Person Excommunicate, until he conform*: But by the latter, he must be buried in Church or Church-yard, according to the Laws Ecclesiastical, under 20 *l.* Penalty on his Executors. 'Tis well 'tis not on the Curate.

Every Curate is, by the Rubric before the Communion Office, required *to call and advertise any notorious Evil Liver, that he presume not to come to the Lord's Table*; and this is afterwards called *a repelling of him*; so that it is evident, the Minister, in such a case, is not bound to admit the Offender (let him be never so great a Man) to the Communion; but *the Curate is, within 14 Days, to give notice of it to the Ordinary*; that is, I suppose, if the Admonition or Repulse were publick; for if the Curate, laying aside his Authority, do only in private advise him to refrain, then there is no
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Necessity of giving an account of it to the Ordinary.

But if the Offender do, at the Curate's Admonition, *openly declare himself to have truly Repented and Amended his naughty Life*, then he is not to be Repelled; and consequently no notice need be given to the Ordinary: But then it may be ask'd, whether the Curate can, without a *Rule of Court*, take the publick Confession, and Declaration of Repentance of any Delinquent Parishioner?

In answer to which, I know not what the Canonists of this Age will say; but I will tell the Reader what I find in *Lyndwood*, which is, that *every Priest may enjoin publick * Penance to his own Parishioner. L. 5. T. 16. c. Præterea, in Gloss.* And I suppose that Confession of Crimes, is the lowest degree of publick Penance. Nay, the Canonists of that Age allow'd, that Curates might excommunicate such as convers'd with Excommunicates without necessity, *Excommunicatione Minori*; and likewise, that they might absolve Persons under that Censure, unless it were in such Cases as were reserved to the Bishop, &c. And they gave this Reason for it; namely, that Curates, that is, Incumbents, or those who represent them in their Absence, were Prelates, and Prelates have Jurisdiction, and there can be no Jurisdiction without Coercion,

* *The Canonists distinguish between Publick Penance, and Solemn Penance; this last was performed only in Lent, with a white Sheet, and bare Feet, &c. this none but the Ordinary could enjoin.*

tion, L. 3. T. 16. c. *Quoniam Propt. v. Censuram Ecclesiast. & ad Ordinarium. & L. 5. T. 16. c. Sacramentum, v. non tenere.* The Constitution of Edmund, Archbishop of Canterbury, *de Delictis*, gives Power to the Assistant Priests (*capellani*) after three Admonitions, to Excommunicate a Parishioner that withdraws his Tythes. And it appears, that Curates did likewise, without Commission from their Bishop, absolve Persons that were under the greater Excommunication, till Archbishop Peckham made the Constitution abovementioned, *viz. Sacramentum*; whereby such Proceedings were forbid for the future. To denounce, or publish an Excommunication past by a Superior, by virtue of a Letter under Seal of Court, was so far from being an Office peculiar to Clergymen, that by the Constitution of Archbishop Boniface, *Item contra*, L. 5. T. 17. this was allow'd to be done by Apparitors, or even by Beadles. I dare not say how far Custom has lessen'd the Power of Incumbents, but the *Rubric* is a safe Rule for them to act by.

By Statute 35 *Eliz. I.* any Minister may in the Parish-Church, take the Submission of a Penitent Recusant, and the Recantation of a Schismatick, by *Can. 17.* And I suppose that every Minister has Power to absolve every Penitent at the *Hour of Death*, from any of the greatest Crimes, upon a sincere Confession and Repentance.

There are indeed several Cases mention'd by the Canonists, as *reserv'd to the Bishop*, and from which none could Absolve but he in Person; as *Incendiarism, Heresy, &c.* but in *Articulo*

iculo mortis every Curate could Absolve even from these. See *Provinc. Præterea* of Archbishop *Peckham*, and *Superno* of Archbishop *Stratford*. And if such a one die without Absolution, yet upon Application to the Ordinary Absolution may be passed after his Death; tho', I believe, any discreet Clergyman would, in such a Case, think it a sufficient Justification for burying such a Person, if he have good *Witnesses that can testify his Repentance*, without putting the Friends of the Deceased to the Charge and Trouble of a formal Absolution from the Ordinary.

In times of *Popery* there was another Censure used to be inflicted by Ordinaries, or Bishops; which was the forbidding all Sacraments and Divine Offices to be performed (except Baptism to Children, and the Sacraments of the *Eucharist*, and *Unction* at the point of Death) within any Parish, Town, County, or Nation; and farther, they sometimes prohibited the People living within such Places, to be present at Divine Service, in any other place. This Censure was commonly inflicted, on pretence, that the Privileges of the Church and Clergy, had been violated by the Lords, Magistrates, or Princes of any Place or Nation, and so the Innocent suffer'd together with the Guilty; and the Subjects or People, for the Faults of their Superiors. In the Reign of King *John*, this Kingdom lay under a Papal Interdict for above six Years together, beginning *Anno Dom. 1208*, for no other Cause, but that the King was not willing to own *Stephen Langton* Archbishop of *Canterbury*, he being preferr'd to that See by the fol-
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Authority of the Pope, in opposition both to the King and Convent, who had long before jointly elected *Gray*, Bishop of *Norwich*, to the Archiepiscopal Chair; and at last the Pope carried his Point. And the Pope, as far as in him lay, put the Republick of *Venice* under this Censure, about the beginning of the last Century. There was also an Interdict against particular Persons, whereby they were for some lesser Crimes prohibited from entering within the Church Doors. This, *Lyndwood* says, succeeded in the room of the Lesser Excommunication.

Papish Ordinaries did not only inflict these Censures beforementioned, but sometimes Sentenced Offenders to be Bastinado'd, or to run the Gantlope. This they call'd *Fustigatio Solennis circa forum vel Ecclesiam*. *Athon* asks a sawcy Question, viz. Whether a Gentleman or Freeman might be thus handled? And leave it undetermin'd. *Const. Othob. De Archidiaconis Verb. crimina puniant*. And who can wonder, that Subjects were thus dealt with in those Times, when he considers, that one of our Kings, *Henry II.* was in some such manner disciplin'd by the Monks of *Canterbury*, for being the Occasion of Archbishop *Becket's* Death?

C H A P. XX.

Of Holy-Days.

HOly-Days of Obligation by the Constituti-
 on of *Simon Islip*, Archbishop of *Canter-*
bury, who sat in the middle of the 14th Cen-
 tury, were those which we now observe, (ex-
 cepting *St. Paul's Conversion*, and *St. Barnabas*):
 and also over and above what we observe, *St.*
Thomas the Martyr (Becket) on *Dec. 29. Wed-*
nesday in *Easter* and *Whitsun-Week*; The In-
 vention of the *Cross*, *May* the third; *Corpus*
Christi Day, being the *Thursday* after *Trinity-*
Sunday; Translation of *St. Thomas (Becket)*
July 7th; *St. Mary Magdalen*, *July 21st*; *St.*
Laurence, *Aug. 10th*; *Assumption* of the *Virgin*
Mary, *Aug. 15th*; *Nativity* of the *Virgin*
Mary, *Sept. 8th*; *Exaltation* of the *Cross*,
Sept. 14th; *St. Nicholas*, *Dec. 6th*; *Conception*
 of the *Virgin Mary*, *Dec. 8th*; The *Dedication*
 of every *Church*, to be kept by the *Inhabi-*
 tants of that *Parish* only; as also the *Festival*
 of the *Saint* to which every *Church* was *De-*
 dicated; *Henry Chicheley*, Archbishop of *Can-*
terbury, afterwards added the *Feast* of *St. George*,
April 23d; and of *St. David*, *Mar. 1st*; *St.*
Ebad, *Mar. 2d*; *St. Winefred*, *Nov. 3d*; And
 afterward *St. John of Beverly*, *May 7th*. By
 an *Act of Convocation*, pass'd by *Henry VIII.*
Anno Dom. 1536. the great Number of *Holy-*
Days is complain'd of, and in some Measure
 lessen'd

lessen'd: For the *Feast of the Dedication of every Church* is order'd to be kept upon one and the same Day every where, viz. the first Sunday in *October*; and the Church Holyday, that is, the Saint's Day to which the Church is dedicated, wholly laid aside. By Statute the 2d and 3d of *Edw. VI. c. 3.* the Feasts are the same that are now, only the Conversion of *St. Paul*, and *St. Barnabas*, were added at the Beginning of *Q. Elizabeth's* Reign. There was an Office for *St. M. Magdalen's Day* in the first Book of *Edw. VI.* but it was omitted in the second, and in all the Editions since that.

By this Act of *Edw. VI.* all Persons were equally oblig'd to keep *Holydays* and *Sundays*; and all Persons offending, were to be Censur'd by the Ordinary, who was to enjoin them *Penance at discretion*: But this Act was Repeal'd by Statute 1 *Mary c. 2.* and afterwards this Statute of *Mary* was Repeal'd by 1 *Jac. I. c. 25.* *Wingate* and others doubt whether this Act of *Edw. VI.* be Reviv'd by the Repeal of *Jacob. I.* but, according to *Coke*, it is well Reviv'd. *Watf. c. 25. p. 249.*

However, the Observation of *Holydays*, is, as it were, part of the Common-Law of *England*; they having, in all probability, been kept ever since Christianity itself was here received. In the Council of *Cloueshoe*, where not only the Prelates, but King and Nobility were present, in the Year 747, the Observation of *Holydays* (the Nativities of the Saints, as well as those instituted in Honour of our Blessed Saviour) was enjoin'd by all the Authority, both sacred and Civil, of this Church and Nation,

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and from that time forward, hath still been retain'd till the late Rebellion, when this, and many other good things grew into disuse: But at the Restauration they were again reviv'd by the *Act of Uniformity*, whereby the *Liturgy*, as amended by *Convocation*, is established; for in this *Liturgy*, which this *Act* authorizes, there are *Epistles*, *Gospels*, and *Collects* appointed to be read on Holydays, and the Curate is to give notice on the *Sunday* before, *what Holydays are to be observed the Week following*: And the Preface of that *Act* intimates it to be Schismatical to refuse to come to Church on *Holydays*; and by this *Act*, 1 *Eliz.* is declar'd, *to be in full force*; and by 1 *Eliz.* all Persons are oblig'd to resort to their *Parish Church* on *Holydays*, as well as *Sundays*, upon pain of Punishment by the *Censures of the Church*, and likewise upon pain of 12 d. for every Offence, to be levied by *Distress*.

The Statute Law has made a Distinction in this last Age betwixt *Sundays* and other *Holydays*. 'For all Pastimes, out of their own Parishes, are forbid People on the *Sunday*, under Penalty of 3 s. 4 d. or being set in the Stocks three Hours; 1 *Car. I. c. 1.* and all Work, and worldly Business, or Travelling without License from a Justice, is forbid on this Day under 5 s. Penalty; and Goods expos'd to Sale are forfeited, by 29 *Car. II. c. 7.* By the same Law, any Process served on the same Day is void, and he that serves it is punishable, as if he had done it without Warrant. Farther, he that goes with a Waggon, or travels with

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Drove, forfeits 20*s.* and a Butcher killing Meat, or selling it, 6*s.* 8*d.*" 4 *Car. I. c. 1.*

By *Stat. 27 Hen. VI. c. 5.* Fairs and Markets are forbid to be kept on *Ascension-Day*, *All-Saints*, *Good-Friday*, and every *Sunday* in the Year (the four *Sundays* in Harvest excepte) on pain of forfeiting the Wares to the Lord of the Franchise. This is still in Force, save that the Four *Sundays* in Harvest, are by latter Acts to be kept as other *Sundays*.

But the Parliament never saw just occasion to make any penal Law against Clergymen, for neglect of their Office on that Day, which shews how diligent they have been in this main part of their Duty, or at least, how great a Care the Bishops have taken to prevent, or supply any Defect in this particular.

If the Clergy have not of late Years been so strict in observing other *Holydays*, it is chiefly to be attributed to the backwardness of the People, who either thro' false and superstitious Notions, or an immoderate pursuit of Worldly Profit and Pleasure, are not easily drawn together to worship GOD on these Days.

The Bishops indeed have the same Power to oblige their Clergy to observe other *Holydays*, that they have to oblige them to keep *Sundays*: But there are several penal Laws, whereby all People are bound to go to Church on *Sundays*: and these Laws are in force against all Persons that do not go, either to Church, or some other Religious Assembly on that Day. [See *Tolerati- on Act.*] But not against *Dissenters*, who do not publickly worship GOD on *Holydays*: The Act of 1st *Elizabeth* is indeed in full Force

against those who are not Dissenters, but if they should be prosecuted on this Act, this were one effectual way to make them so. By the Canon Law People were obliged to forbear all Work on these *Holydays* of Obligation, even *such Works as were profitable to the Commonwealth*: But our Statute Law is not so severe: And even by the Act of Convocation made in 1536, the People were permitted *to work in Harvest on all Holydays, Sundays not excepted.*

There is in our Liturgy a Table, containing *the Days of Fasting and Abstinence.* By *Fasting or Abstinence*, I think none of our Church understand, forbearing *Flesh*, and eating *Fish.* Tho' by *Statute 5 Elizab. 5.* still in Force; 'none may eat *Flesh* on *Fish-Days*, without 'License from the Bishop or Minister, under 'Penalty of three Pounds in Money, or three 'Months Imprisonment without Bail, and forty Shillings Forfeiture to him that conceals it: But this is declared to be a meer political Law, and he who says 'tis necessary to abstain 'from *Flesh, for the Service of GOD*, shall be 'punish'd as a *spreader of false News*; that is, 'be imprison'd till he produce the Author, Stat. 34 *Edw. III. c. 1.* and if he cannot produce the Author, *he shall be punish'd by the King's Council, 12 Richard II. c. 11.*

By this Act, *Wednesday*, (not falling in *Christmas*, or *Easter-Week*) is made a *Fish-Day*; yet one Dish of *Flesh* to three of *Fish*, is allow'd on this Day, of which it is said, that it had *not heretofore been used as a Fish-Day.* By Stat. 27. cap. 11. of *Eliz.* the foregoing Act is repeal'd, so far forth only as it concerns eat

ing Fish, or prohibiting Flesh on *Wednesdays*, is not having before that Act been used as a *Fish-Day*. Stat. 35 of *Eliz.* c. 7. Sect. 22. restrains the Forfeiture for eating Flesh on *Fridays*, to 20*s.* or one Months Imprisonment; and for concealing of it to 13*s.* 4*d.* any thing in the said Stat. (Stat. 5 of *Eliz.*) to the contrary notwithstanding. This supposes the Act yet in Force. The Stat. 1 Jac. I. c. 29. speaks of the 5th of *Eliz.* as yet in Force in Sect. i. and iv. Therefore tho' this Act of *Eliz.* was at first only temporary, it is certain it was made perpetual by some following Statute; and *Wingate*, the Abridger, puts it as a perpetual Act, (tho' what relates to *Wednesday*, ought to be excepted) yet Bishop *Gibson* prints it as a repealed Act; and a late Writer affirms it so to be; but without Cause for so doing. By Statute 2, 3 *Edw.* VI. c. 19. the Penalty of eating Flesh on Fish-Days is 10*s.* and ten Days Imprisonment for the first Offence; 20*s.* and twenty Days Imprisonment for the second. The Act is declared to be made on Consideration, that due, and godly Abstinence is a Means to Virtue; but especially that Fishers may be set at Work, and that by eating Fish, much of Flesh may be saved and increased.

But, I suppose, our Days of Abstinence are to be kept, by forbearing those Pleasures and Varieties of Meats and Drinks, and Diversions, which we may at other times innocently enjoy. *Bellarmino* says, that the Feasts and Fasts of the Church, habent mitissimam obligationem. We of the Church of *England*, act as if we thought so too.

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Besides the stated Feasts and Fasts of the Church, there are other Days prescribed to be observ'd by Act of Parliament, viz.

The Fifth of *November*, as a Day of Thanksgiving for the Discovery of the *Gunpowder-Treason*; and the Statute for keeping the Day, is to be read after Morning Prayer, or Preaching on the same Day.

The 29th of *May*, as an Anniversary Thanksgiving for the Restauration of the *Royal Family* and the Church; the Act 12 Car. II. c. 14. to be read on the *Sunday* next before.

The 30th of *January*, as a Day of publick Humiliation, for the Murder of K. Charles I. by virtue of a Clause in the Act for Attainder of several Persons guilty of the horrid Murder of his late Sacred Majesty K. Charles the First. 12 Car. II. c. 30. confirmed by 13 Car. II. c. 7. neither of which Acts, nor the Clause relating to this Day are order'd to be read in the Church; and it is to be observed, that by the Words of the first Act, *if this Day fall on a Sunday, 'tis to be kept on the next Day.* For it is a Rule always observed not to fast on *Sunday*; because, that is the stated Christian *Feast* in all Churches, but those of *Rome*, and *Scotland*. For the Church of *Rome*, contrary to the ancient Practice, obliges her Votaries to *Abstain* (as they call it) on *Sundays*, as well as other Days in *Lent*: And in *Scotland* State-Fasts are often appointed on the same Day.

Some have question'd, by what Law the Fasts, and Thanksgivings appointed by the King, are observ'd, and by what Authority the Office for the Day appointed by Act of Parliament,

ment is set aside, and an occasional Form appointed to be used instead thereof. I think it is sufficient in this Case, that the two Houses of Parliament have, and do own this Power to be lodg'd in the Crown; as they do, by always submitting to these Royal Commands in observing these Days in the manner prescrib'd by *Proclamation*, and sometimes petitioning the King or Queen to order these Religious Solemnities. I mean, it is sufficient to secure the Clergyman that observes such Days, and uses such Prayers, from the Censure of his Ordinary, and the Penalties of the Statute; but it is not sufficient to lay any Obligation upon him to comply with such Impositions. *See the Case of Occasional Days and Prayers.*

By the aforesaid Constitution of Archbishop *Islip*, every Bishop had power to command any Saint's Day, not mention'd in that Constitution, to be solemnly observ'd within his own Diocese. But *Lyndwood* tells us, This must be meant only of such Saints as had been Canonized by the *Pope*: Of which they have a great plenty, one or more for every Day in the Year.

For the protection of those who observe Religious Times, by frequenting the publick Worship, it hath been provided, that *no Priest, Clerk, or other Person of Holy Church, * doing Divine Service, be Arrested.* 50 Edw. III. c. 5. 1 Rich. II. c. 15. This Act is so understood, that no Person shall be Arrested, *Eundo morando,*

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* *Bishop Gibson supposes, that the Temporal Lawyers are mistaken in applying this Privilege to such as are not Clergymen.* Code p. 11.

nando, redeundo, to, at, or from Divine Service; the Person offending may be fin'd in the *Temporal Courts*, or Excommunicated, and condemn'd in Cost in the *Ecclesiastical*: But then this Act protects no one against a Warrant from a Justice, for that is *for Breach of Peace, and for the King*. And farther, If the Party Arrested have Absconded, he has no Benefit by this Act. And, after all, tho' the Bailiff be punishable, yet the Arrest is good in Law. *Watf. c. 34. p. 261.*

CH A P. XXI.

Of MARRIAGE.

IN order to a regular Marriage, the Banns must first be publish'd in time of *Divine Service*, on three several *Sundays* or *Holydays*, by the Curate, or Curates of the Parish, or Parishes, where the Parties dwell. I have heard of some Clergymen, who have doubted, whether they are bound to publish Banns, in case they themselves do not fancy or approve of the Match; and I suppose the occasion of this Doubt is, that there is no Penalty by the Canons of 1602, provided for those who neglect or refuse to publish Banns, as there is for those who refuse to Christen, Bury, &c. but then there is a very severe Canon made against it in a National Synod held at *London*, 1268, under Cardin. *Othob.* with the two Archbishops, &c. which leaves the Penalty

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to the Archbishop, and calls all those that *bind under the Solemnization of Marriage*, præsumptores, presumptuous Men. See *Const. Othob. Conjugale*. And farther, by *Art. 32d*, of the 39th, 'tis declared *lawful for Ministers, as for all other Christian Men, to Marry at their own Discretion*: So that every Christian Man is at his own Discretion in this Matter, as much as the Minister himself. And as every Clergyman has subscrib'd this Doctrine, so I suppose he is obliged to act according to it, especially since these Articles are authorized by Statute; and to maintain any Doctrine contrary to them is punishable by Deprivation. 13 *Eliz. c. 12*.

Whoever has any Objection against a Marriage, must apply himself to the Ordinary, who, if he see Cause, may send an *Inhibition* to the Minister, forbidding him to proceed: But if no such Inhibition be sent, the Minister may marry them at any lawful Time or Place: But at the time of Marriage, when the Minister says, *If any one know any just Cause, &c. then, if any one do allege any Impediment, and give Security to the Persons to be Married, to the full Damages they will sustain by not being Married, that he shall prove his Allegation*; then the Marriage shall be deferr'd till the Cause be determin'd, or Parties agreed.

Lawful Impediments are three, viz. * 1. *Pre-contract*, when one, or both Parties, are before Married, or Pre-engaged to some other Person,

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* *Pre-contract soundly prov'd, dissolves Matrimony with any other Person, tho' it be consummated, by Stat. 2 Edw. VI. c. 23.*

by solemn mutual Promise made before several good Witnesses, *and a Suit is hereupon commenced* in some Ecclesiastical Court, *Can.* 102.

2. Consanguinity, or Affinity : To know who are too near a kin to Marry by the Laws of our Church. *See the Table of Degrees*, set forth by Archbishop Parker, *Anno Dom.* 1563, and authorized and enjoined to be set up in Churches, by *Can.* 99. 3. Want of Consent of Parents or Governors, if either Party be under 21 Years of Age. *See Can.* 100. And I suppose the Case is the same if either of the Parties be Idiots : (for such are always Minors). And in case the Minister, after Banns publish'd, do marry Persons under that Age, without having the express Consent of Parents, or Guardians, he incurs Suspension for three Years, by *Can.* 62.

Cousin-Germans are not forbid to Marry, by any Law of *GOD*, or *Man*, except the *Pope's* Canon Law, which is not now in force, as to this particular. *See Statute 32 Hen. VIII. c. 39.* And if *Cousin-Germans* are not prohibited, as 'tis certain they are not, then they who are more remotely related, cannot be under any restraint in this particular ; whatever some People have vainly fancied.

By the same Popish Canon Law, not only *real Relations* were forbid Marriage, but *imaginary* ones ; I mean any Man and Woman that had stood *Sureties* for the same Child, or that had at the Baptizing of it *laid their Hands on it, in order to take it out of the Font*, when it was *dipped* (as the Custom then was). Nay, this extended to the Baptizator, and his Sons and Daughters, and to the Father and Mother

of the Person baptized. For it was pretended, that by this means a spiritual Affinity was contracted; so that very little regard is to be had of this Law, and by no other Law is the Marriage of *Cousin-Germans* forbid.

Some Parish Officers have presum'd to forbid Banns, because the Parties have been poor, and like to create Charge to the Parish, or because the Man has not been an Inhabitant, according to the Laws made *for the Settlement of the Poor*. But,

No Person has Authority to forbid the Minister to proceed in publishing the Banns, but *the Ordinary only*. If indeed the Minister be fully satisfied, that there be any of the three *Impediments* abovemention'd, he ought in reason to forbear Publication, and is liable to Censure, if he proceed to marry them; if it can be proved, that he knew the Impediment: But the Curate is not to stop his Proceeding, because any peevish or pragmatistical Person, without just Reason or Authority, pretends to forbid him. Poverty is no more an Impediment to Marriage, than Riches, and the Kingdom can no more subsist without Poor, than without Rich. And I see no reason to doubt, but that Banns may be publish'd, and Marriage be solemniz'd betwixt two Persons that do at present *abide*, or *sojourn* within a Parish, tho' they be not fixt Inhabitants, according to *the Acts for settling the Poor*. For such Persons are Parishioners, as to the Minister, who is to visit them, if they are Sick, to give them the Sacraments whilst Living, and bury them when Dead. And they are to perform the Duty of Parishioners to him, *viz.* to pay him Tythes and
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Offerings, if there be any to be demanded. They are Parishioners in all Respects, but only that they are not liable to be kept by the Parish, if they fall into Poverty. Nor does the Law say, that any Man is made liable to be kept by a Parish, because he was there *Married by Banns*: Nor does it appear, that these Temporal Laws, relating to the Poor, were intended to alter the Laws of the Church, which by Custom and Canon has all along permitted, and requir'd Persons to have the Banns publish'd, and the Marriage celebrated where the Parties *dwell, or are commorant*. See *Can. 62. in Latin and English*. And the Rubric before Marriage is to the same purpose, *viz. If they dwell in divers Parishes, Si degunt in diversis paræciis*, says the Old *Latin Translation*; *si vivunt*, says the New: But, for Caution's sake, the Minister in publishing the Banns, may say, *N. of this Parish Sojourner*.

As to Persons that hire to the value of 10*l. per An.* in any Parish, or whose Settlement there is no occasion to dispute, I suppose there can be no doubt but that they are Parishioners from the first Day of their coming into any Parish. By *Stat. 13, 14 Car. II. c. 12. Forty Days* were requir'd to make one a Parishioner, in case he did not hire 10*l. per An.* value, and by the 3*d* and 4*th* of *W. and M.* these 40 Days shall not commence, till after the Person's Name be publish'd in the Church. But these Acts only relate to *Poor Persons*, or such as are like to become a Parish Charge; and yet even these, as has been said, during their abode there, are Parishioners as to the Curate. For no other Clergyman can

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regularly administer Sacraments, or perform other Divine Offices to such a Person, so long as he continues within the said Parish. By the Canon Law, a Traveller (says *Lyndwood*, L. 3. T. 15. c. *Altissimus v. peregrinantes*) is a *Parishioner of every Church* he comes to, and the *Spiritual Courts* act by this Rule (if by any) when they grant a License to a Man to be married, that has not been 24 Hours within their Jurisdiction, and in their Licenses write *Seamen* of that *Parish*, or *Port*, where they last landed, or where they lodg'd perhaps the Night before.

Some Clergymen have been summon'd and corrected in the Spiritual Courts for marrying Persons in Churches where the Banns were not ask'd, and to which the Parties married did not belong as Parishioners; tho' they had a Certificate of the Banns being publish'd under the Hand of the Minister, or Ministers, whose Parishioners they were: And indeed this was forbid by ancient Canons, as well as by our present 62 Canon: But then the *License of the Curate*, whose Parishioners they were, was sufficient by the *Constitution* of Archb. *Stratford*, L. 5. T. 1. c. *Humana*, which, for ought that appear, is still in force; but then the Curate must do more than certify the Publication of Banns, he must expressly, under his Hand, give leave to the Parties to be married in another Church, and to the Curate of that other Church to marry them.

And indeed by the *Constitution* of Archbishop *Peckham*, *Altissimus*, every Curate may license his Parishioner to Communicate elsewhere.

By the Canons, both ancient and modern, it is well provided, that Marriage shall be celebrated

ted *in facie Ecclesiæ*, or in time of Divine Service; but this Practice is now, as'twere, by universal Consent, laid aside. Yet one Question commonly askt by Judges in Cases of this sort, is, Whether the Church Doors were open, during the Time of the Solemnity.

'Twas an ancient Custom, and a very good one, that Marriage should be performed in no other Church, but that to which the Woman belonged as a Parishioner; and therefore to this Day the Ecclesiastical Law allows a Fee due to the Curate of that Church, whether she be married there or not. And this Fee was expressly reserv'd for him by the Words of the License, according to the old Form, which is not yet disused in all Dioceses: But 'tis said, that Judgment has been otherwise given in the Temporal Courts. But I am apt to think, that the Reason, why Temporal Judges have allow'd no such Fee to be due, is, that it has been claimed by virtue of the Canon Law: Whereas, if it were demanded as due by Prescription, or Immemorial Custom, within such a Parish, or larger District, and this Custom well proved, there is Reason to believe, that the Temporal Courts would allow of this Plea: For Custom is Common Law.

Our Canons do not allow any to be married in private Houses, or any other Time of the Day, but between Eight and Twelve in the Forenoon. And the Bishops seldom or never dispense with these Canons here, as they often do in *Ireland*.

*We might right well, says the Great and Judicious Mr. Hooker, L. 5. sect. 73. * think it absurd to see in the Church a Wedding on the Day of a Publick Fast ; therefore no regular Clergyman marries any by Banns during the Solemn Time of Lent ; when good Christians ought to be engaged in more serious and heavenly Business ; and even when a License comes, and the Case is somewhat extraordinary, yet he can scarce ever get his own Consent, to the doing so unagreeable a thing.*

But the Proctors, and some Almanack-makers tell Clergymen, that Marriage is out from *Advent-Sunday*, till the *Octaves of Epiphany* ; from *Septuagesima-Sunday*, to *Low-Sunday* ; and from *Rogation* to *Trinity-Sunday* ; and that therefore, during those Times, they must marry none without License : But this is a harder Precept than that of the Church of *Rome*, which only obliges Persons not to marry from *Advent-Sunday* till *Twelfth-tide*, and from *Ash-Wednesday* to *Low-Sunday*. See 24 Sess. Conc. Trident. Decret. Reform. Matrimon. cap. 10. and the *Rituale Rom. Ord. Matr.* 'Tis true, *Lyndwood* more than once in his *Gloss.* mentions these prohibited Times, but from whence he took this Rule did not formerly appear to me : But this Point is now very clear. The *Romish* Ritual, before the Council of *Trent*, had caused an Alteration in this Particular, had these Words in the *Ordo ad faciendum Sponsalia*, viz. *Tho' Espousals*

* He mentions indeed Times in which the Liberty of Marriage is restrain'd ; but his Reasons affect real Fasting-Days only.

Espousals may be made at any time, and Matrimony also in private, by giving Consent only; yet the giving of Wives, and the Solemnity of Marriage is prohibited at certain Times, viz. from Advent to Twelfth-tide, from Septuagesima to Low-Sunday, from the Sunday before Ascension to Trinity-Sunday. It is evident then that the Obligation to forbear Matrimony at these Times was wholly grounded on this Rubric. But now this whole Ordo is entirely abolish'd, by the several Acts of Uniformity made in the Reigns of Edw. VI. and Queen Elizabeth; but especially by Stat. 3, 4 Edw. VI. c. 10. where it is enacted, That all Books heretofore made for the Service of the Church, other than such as shall be set forth by the King's Majesty, shall be by the Authority of this present Act extinguish'd, and forbidden to be used, or kept in this Realm. 'Tis true, this Act was repealed by Stat. 1 Mariæ ses. 2. c. 2. but reviv'd by Stat. 1 Jacob. I. c. 25. And this Rubric is not now in force in the Church of Rome itself.

The very Learned Bishop Gibson, Code p. 518. informs us, that in Parliament, 17 of Elizabeth, a Bill was depending, Entitul'd, *An Act declaring Marriages lawful at all Times.* And that in Convocation, A. D. 1575. the last Article presented to the Queen for Confirmation, but rejected by her, was, *That the Bishops shall take order, that it be published, and declared in every Parish Church, That Marriage may be solemnized at all times of the Year.* It was sufficient Grounds for a Declaratory Law, that many Inferior Ordinaries did

did urge the Observation of these Times; but 'tis evident the Convocation thought there was no Occasion for any such Law to be made, and therefore judg'd it sufficient to have their Opinion publish'd in all Churches, without any such Declarative Law. Mr. *Strype* takes notice of a Scheme intended to be offer'd to Parliament, or Convocation, or both, *A. D.* 1562. That it shall be lawful to Marry at any time of the Year, except Christmas-day, Easter-day, and six Days before, and upon Pentecost-Sunday. All this shews that the Men of Thought in that Age did believe, that these Times mention'd in the old Ritual were no longer of any Obligation, or at least, that they ought not so to be, though the inferior Ordinances countenanced by the Queen did still press the Observation of them.

Indeed the Council of *Ænkam* does mention such Times; but, among them, reckons all the greater Feasts, and fifteen Days after *Easter*, and the *Ember-Days*, but omits the *Rogation*. So that this is a Rule observ'd by none, and indeed it was made, *A. D.* 1009 long before any Canon or Statute now in force: See *Spelman's* Vol. I. p. 518.

2. Nor do any of our Canons made since the Reformation, take notice of any such Times. The 62d of the Canons made in 1602. forbids Ministers to Marry at *unseasonable Times*; but 'tis evident, that thereby are meant *Times of the Day, not of the Year*, for 'tis presently added, *but between the Hours of 8 and 12*: So that it does not appear, that these Times were ever

ever intended to be prohibited by our Prelates since the Reformation.

Dr. *Cofins*, that most exact Civilian, takes no notice of any such Times prohibited in his Tables, though he had a fair Occasion to do it. *Tab. 4, 8, 9.*

Dr. *Comber*, in his Defence of our Liturgy *Part. 4. pag. 4.* only says, *These Times are observed by some*: Which is, indeed, the most that can in Justice be said. Farther, in the Form of License drawn up by Convocation *A. D. 1597.* to be seen in *Sparrow's Collection* there is no mention of any prohibited Times. The Words, *Et si tempore de jure prohibito* have since been foisted in by the Proctors. So that if ever there were any such Custom, I suppose it might truly be said, That 'tis now out of Doors.

Thus much have I said on this Subject, not so much for the sake of the Clergy, as the People. For, indeed, the greatest Hardship is to them who are hereby, for a great part of the Year restrained from using that Liberty which God and Nature allows all Men, and which all Governments ought to encourage, I mean, *Honest Marriage*. For the greatest part of the Nation are such as cannot be at the Charge of a License without hurting themselves, and their future Families; and indeed, by the Canon, License ought not to be granted, but only to *such as be of good State and Quality.* Can. 101.

Some have indeed question'd the Bishop's Power to grant *Licenses* for Marrying in any Case, without Banns first published, because this is dispensing with an Act of Parliament; for the

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Marriage-Office, which requires Banns, is part of the Statute Law. But then it is answer'd, That this Power of dispensing is granted to the Bishop by Statute Law too; I mean, by the 25 *Hen. VIII. c. 21.* by which *all Bishops are allow'd to dispense, as they were wont to do:* And such Dispensations have been granted by Bishops ever since Archbishop *Mepham's* Days at least, who died *Anno Dom. 1333.* See *Prov. L. 4. T. 3. c. 1.* Or rather the sixth Constit. of *Zeuch*, Archbishop of *York*, 1347.

Many of those Churches which formerly were exempt from the Visitation both of Bishop and Archbishop, by virtue of the Pope's Bull, in favour of some Monastery of Regular Monks or Friars, do still remain so exempted; and so are visitable only by the Crown, and have now for some Ages been visited by no body at all: These are called *Lawless Churches*; because the Ministers belonging to them being not obnoxious to the Visitation of any Spiritual Ordinary, marry without either Banns or License.

Marriage without Banns or License is good, and valid in Law, if there be no *Legal Impediment*; but the *Minister* is liable to three Years *Suspension* who married so: And the Parties married may be corrected in the Spiritual Court. *Godol. c. 33. Sess. 3. 5.* and no *Prohibition* lies. If there be any Legal Impediment, the Marriage is null, tho' Banns have been published, or License granted; *for so many as are cupp'd together otherwise than God's Word doth allow, are not joined together by God, neither is their Matrimony Lawful.* Office of Matrimony.

C A H P. XXII.

Of the Christian Æra, and our Account of Time.

WE now reckon 1730 Years since the Birth of Christ, which Account was first settled by *Dionysius Exiguus*, a *Scythian* born, and afterwards a *Roman* Abbot: He drew a *Paschal Cycle* for 97 Years, beginning 527. From him others took this Way of Reckoning. The first time we find it used here, is at the Council of *Baccancelde*, which is dated *A. D.* 694. at the Council of *Calecuth*, *A. D.* 816. c. 9. all the Bishops are required to take an Account of the Year of our Lord. The *French* and *Germans* did not receive it, or use it in any of the Epistles and Charters, till the latter end of that Century. *Bede* was the first who is observed to have made use of it in History, either here or any where else.

But *Scaliger*, and others since him, will not allow that the *Annus vulgaris Dionysii* is the *Annus verus*; he places it almost two Years sooner; some four, some five; but one of our Nation has fix'd it precisely three Years, two Months, and seven Days, before the Common Account. *Harm. of the Gospels*, p. 161.

The exact Observations of later Ages have discovered an Error in the *Julian* Account of Years so called because settled by *Julius Cæsar*, 4
Year

Years before the Birth of Christ, and by him order'd to be observ'd throughout the *Roman Empire*, of which *Britain* was then a Province, and is still retain'd here, and called the *Old Stile*.

By this Account the Year is supposed to consist of 365 Days and 6 Hours; the odd Hours added together, amounted every fourth Year to a whole Day, which is therefore added every fourth Year, call'd *Bissextile* or *Leap-Year*.

But there are not six full Hours above 365 Days in the true Solar Year, there are 10 Minutes, 44 Seconds wanting to make the 6 Hours compleat; and therefore the addition of a whole Day every fourth Year was too much, and in 34 Years makes a Variation of a whole Day; by which means it is come to pass, that the *Vernal Equinox*, which was in *Julius Cæsar's* Time, on the 24th of *March*, and at the Council of *Nice* on the 21st, now falls, according to our *Old Stile*, on the 10th of that Month.

Pope *Gregory XIII.* to correct this Error, in the Year 1582, order'd 10 Days of that Year to be left out, by calling the 5th of *October* the 15th; by which means, the next *Vernal Equinox*, which would otherwise have been on the 10th of *March*, fell on the 21st, as it did at the time of the Council of *Nice*, 325 Years after Christ. He also order'd the Intercalary Day, the 29th of *February*, to be omitted at the end of the three ensuing Centuries, and to be retain'd at the beginning of the fourth. This is called the *Gregorian* or *New Stile*, which since the beginning of this 18th Century, differs eleven Days

Days from the other ; whereas before 1700, it was only ten before ours.

According to the old *Roman* Calculation, the 25th was looked upon as the Intercalary Day, and from thence the Leap-Year was called *Bissextile*, viz. because there were two Days called the sixth Day of the Kalends of *March*, the 24th was *Sextus Calendarum*, the 25th *Bissextus*. Some have supposed, that therefore every Leap-Year, the Feast of St. *Matthias*, who was, as it were, intercalated among the Apostles, is to be observed on the old Intercalary Day, viz. the 25th. Some Almanack-makers do so place it : But I remember that Archbishop *Sancroft* publish'd his *Rescript* against them for this Practice, *A. D.* 168 $\frac{3}{4}$, declaring that the Feast of St. *Matthias* was always to be kept on the 24th, and *Micrologus de Ecclesiasticis observationibus* c. 47. (a Book written in the 11th Century) directs this Feast to be kept on the 24th Day on the Leap-Year. The Learned Author of a small Tract, Entituled, *The true Time of keeping St. Matthias's Day*, attempts to prove, that according to the old Computus it should on such Years be kept on the 25th ; but in an *Appendix* confesses that our Rule has fixed it to be constantly observed on the 24th. And indeed Archbishop *Sancroft* was the Person, who was most capable of deciding this Question, for he was principally concerned in regulating the Calendar in Convocation, *A. D.* 166 $\frac{1}{2}$. *Durandus* intimates, that it was indifferent whether it were kept on the 24th or 25th in the Leap-Year. *Rationale L. 8. c. 3. sect. 17.*

In the Year 1719 was published at *Oxford*, a very ingenious Treatise, written by the late Memorable Dr. *Wallis*, concerning St. *Matthias*-Day; by which we have considerable Light given us into the Ecclesiastical *Computus*. He has, beyond all doubt, proved that the Church Account of Time is, and ever was, made in the Western Church by the *Kalends*, *Nones*, and *Ides*; not by the vulgar numbring of the Days of the Month, 1, 2, 3, &c. and that the Feast of St. *Matthias* had for many Ages past, before the Reformation, been kept (in the Leap-Year) on the 25th of *Febr.* (according to the vulgar Account.) I have an *Almanack* in a printed *Portiforium secundum usum Sarum*, which confirms the Doctor's Notion. For in a Rubric at 5 *Kal. Martii*, or *February 25.* it says, *Si Bissextus fuerit, quartâ die a Cathedrâ Sii. Petri* (that is, 8 *Kal. Mart.* or *Febr. 22.*) *Inclusive fiat Festum Sti. Matthiæ, & F. Litera his numeretur.* Yet I cannot but wonder that the Doctor should affirm the 24th to be the Intercalary, or *Insidious* Day on the Leap-Year, as he does, pag. 6, 8, 14. Nay, he says, pag. 5. and elsewhere, that the said Intercalary Day, is between the 6th and 7th *Kal.* of *March*. He certainly meant between the 6th and 5th: The 24th is always the 6th *Kal.* on Leap-Year as well as others, the 25th is the 5th *Kal.* on the common Year, the *Bissextus* on the Leap-Year, and therefore most assuredly the Intercalary Day. The Letter *F* is to be repeated, not by putting it first to the 23d, and then again to the 24th, but by putting it first to the 24th, then to the 25th, and the 6th *Kal.* goes along with

with the Letter *F*. It is absurd to suppose, that the first 6 *Kal.* which is *Febr.* 24th should be *Bissextus*, and the 25th simply *Sextus*. *Primo-Sextus* must of necessity precede *Bissextus*. And *Bissextus* is but another Word for the *Intercalary* Day. The Mistake seems to have arisen from the Doctor's forgetting that the Computation of the *Kalends* is retrograde. I mean, forgetting it at the precise Minute that he mention'd the 6th and 7th. If he had indeed believed that it was between those Days, and had not a failure in Memory, he would have said the 7th and 6th, because here the 7th is before the 6th. And the happiest Memories, with the greatest Knowledge, cannot secure Men against such Lapses. The Doctor's own Author, *Clavius*, with whose Citation he ends his Book, corrects him in this Point. His Words are, *In anno Bissextili Festum Sti. Matthiae celebratur 25 Februarii, & bis dicitur sexto Kalendas, id est, Die 24, & Die 25.*

Yet the Reformers in *Q. Elizabeth's* Time, seem to have thought the 24th the *Intercalary* Day. For they give this Direction, "When the Years of our Lord may be divided into four even Parts, then the *Sunday* Letter leapeth; and that Year the *Psalms* and *Lessons* which serve for the 23 Day of *February* shall be read again the Day following, except it be *Sunday*, which hath proper *Lessons*. See the Order how the rest of *Holy Scripture* is appointed to be read in *Q. Elizabeth's Common-Prayer-Book*. This Mistake was probably seen by our Reviewers at the *Restoration*, therefore they

they struck it out. But it is observable that the Observation of St. *Matthias's* Day was not fix'd, as at present, to the 24th of *Feb.* by the *Kalendars* of Queen *Elizabeth's* Reign. Therefore not only Dr. *Wallis* (*pag.* 7.) but the last Writer on this Subject (*pag.* 251.) is mistaken, when they say, That St. *Matthias's* Day was always the 24th. So is the latter, when he says, the *Dominical Letter* is not chang'd till *Feb.* 29, and that the *Dominical Letter* for the 28th, is repeated on the 29th, contrary to the known stated Rule. Upon the whole, I see no Argument to prove that it was not the Intention of the Reviewers of the Liturgy, to depart in this Point from the old *Computus*. But rather am inclin'd to suppose, that as St. *Matthias's* Day from the beginning of Queen *Elizabeth's* Reign to the Rebellion, had been variously assigned, viz. sometimes on the 24th, sometimes on the 25th, so for the future it shou'd be always on the 24th, as it was in the XIth Century, according to *Micrologus*: And that this was the Design of the Reviewers. Therefore I shou'd think I had reason to adhere to the Emendation made by my venerable Patron, Archbishop *Sancti*, in this Point, had not Dr. *Wallis* assur'd us, that the Archbishop, by the Discourse of himself, and others on this Subject, was satisfy'd it was his Mistake; and that if he had continu'd Archbishop, and in good Circumstances, still another *Leap-Year*, he would have revers'd his former Order, and directed the *Almanacks* to be printed as formerly."

Many have wished that our Computation were rectify'd, and several Ingenious Men have propos'd their several Methods of doing it. Some would have the Year reduced to the same state it was in at the time of *Julius Cæsar*. Others would stop at the Birth of Christ, and others are for looking back no farther than the Time of the Council of *Nice*; and so conforming our Stile to that of the generality of our Neighbours; as the *Protestant States* of Germany did at the turn of the last Century; but yet in such a manner, that they shew'd they judg'd for themselves, and did not blindly follow the *Infallible Guide* at *Rome*: Their Conclusions were not altogether the same with those of *Pope Gregory*, and the Mediums they used were very different, and yet their Account in the main will agree with the *Gregorian*; only if the *Paschal* Full Moon happen on a *Saturday*, the *Gregorian* Kalendar makes the next *Sunday* *Easter*, the *Germans* the *Sunday* se'night.

It is on all hands allow'd, That our *Paschal Calculations* need a Review. 'Tis commonly said, that some Years we observe two *Easters*: as for Instance; in the Year beginning *Lady-day* 1705, and ending 1706, we had an *Easter* *Apr.* 8. and another *Mar.* 24. but then the following Year, viz. between *Lady-day* 1706 and *Lady-day* 1707, there was no *Easter* kept. But on the other side, if we reckon our Year from one *Vernal Equinox* to another, which is certainly the most *Natural Computation*, then even, according to our present Account, we have one *Easter* in every Year, and no more. *Dr. Wallis* has propos'd a short and plain Rule

for the Observation of *Easter*, which would make all manner of *Cycles* needless ; and that is, that *Easter* shall always be the first Sunday after the first Full Moon, next after the Vernal Equinox.

But I apprehend it ought to be consider'd, whenever this Business is undertaken, whether when the *Paschal* Full Moon happens on a Sunday, that shall not be our *Easter-day*, as our present Practice is, and as the Table to find *Easter* for ever prescribes, or whether we shall defer it to the Sunday following, * as the Rule directs. See the Rule to know when the moveable Feasts and Holy-days begin, just after the Kalendar in the Liturgy, which agrees in this Particular with the German Account ; and by which we shall wholly avoid what the Ancients thought a Fault, namely, the keeping *Easter* on the same Day with the *Jews*.

L 2

And

* The Rule is thus express'd, *Easter-day* is always the first Sunday after the first Full-Moon which happens next after the One and Twentieth Day of March. These Words are meant inclusively, as if it had been said, Next after the commencement of the] One and Twentieth Day of March ; so that if the Full Moon happens on March 21st, the same must be the *Paschal* Full Moon. These are the Words of the Author of an Ingenious Tract, Entitled, The Rule for finding *Easter*, &c. The Reader may here see in what Sense the Rule and the Table are capable of a Reconciliation, and the method of finding out the Ecclesiastical New Moons, by which the Table was Calculated.

And indeed, the keeping *Easter* on the same *Sunday* on which the Full Moon happens, may sometimes be occasion of what seems a considerable Mistake ; that is, the Full Moon may happen on what we now call *Sunday*, according to our *Civil Account*, but which in the *Ecclesiastical* or *Religious Account* is part of *Monday*. For *Scriptural Days* begin at Six in the Evening, and end at Six the next Evening, according to those Texts in the first of *Genesis*, *the Evening and the Morning were the first, second, &c. Day*. Now if the *Paschal* Full Moon happens after Six a Clock at Night of the *Civil Sunday*, then it is on *Monday* according to the *Scriptural Account*, and so *Easter-day* ought by no means to be observed on that Day, nor before the following *Sunday* : For tho' the Church does not affect to keep *Easter* on the same Day with the *Jews*, yet she has divided her Nights and Days according to the *Scriptural*, not the *Civil Account*. And tho' our Civil Day begins from Midnight, yet our Ecclesiastical Day begins at Six in the Evening : And therefore the Collect for the *Sunday* is to be read on what in our *Civil Account* is called *Saturday Evening*, and the Collect for every greater Festival at Evening Prayer next before. The proper time for *Vespers* or *Even-Song*, is Six a Clock, and from that time the Religious Day begins ; therefore when Evening Prayer is read at its proper Season, the Collect for the *Purification* may well be used as the Rubric directs, on what we call the *following Evening* ; notwithstanding those Words, *thy only Son was this Day presented in the Temple*.

Again

Against this it is objected, that few Churches begin *Evening Prayer* after Six. True, and this is not the only Impropriety occasion'd by this Means in our Liturgy. But that Six is the Hour of *Even-Song*, is so certain, that no Man will dispute it, who is not a perfect Stranger to Things of this Nature. Nor is it less clear, that Feasts are to be kept from *Even-Song* to *Even-Song* inclusively. And tho' the Natural Day (according to this Account) be past at Six in the Evening, yet the Festival Day is not past till *Even Song* is ended. Holy-days that begin not till Morning-Prayer, are not * perfect Feasts. They were deem'd to be of an inferior Rank by them that had the ordering

* *Some think this needs an Explanation. Now I take the Lords-day to have been the Standard of a Perfect Feast. And this in the ancient Church had its Vigil. The Saturday-Fast still continues as a Vigil in the Church of Rome. In the Eastern Church they kept both the Sabbath and Lords-Day as Feasts: But the Eve, or Night-watch to both began on the Evening of the Sabbath, now called by us Thursday Evening. Athanasius and Socrates after him, gives this reason why the People kept a Night-watch, viz. because a Day of publick Assembly was drawing on. See Athan. de fugâ, Tom. 1. pag. 716. Socr. L. 2. c. 11. pag. 89. & L. 6. c. 8. pag. 321. This shews that a Vigil in those Times did of course go before a Day of publick Assembly. And in the last Citation from Socrates it is evident, that the Saturday, in the East, was introduced by a*

dering of these Matters : But then they who terminate the Feast within certain Minutes, and because Six is the Hour of *Vespers* will allow no latitude, have never consider'd, that in the Scripture Language (which is our best Guide

Vigil. But when Holydays grew too numerous to be universally kept, a certain Number of them was selected to be kept as Holydays of Obligation, and these had their Vigils, even St. Laurence, whose Feast hath ever had a Vigil, because it was always an Holyday of Obligation. The rest, with their Eves, were wholly omitted, save that the Epistles and Gospels, and other commemorative Services for the Day itself, were used in Churches that were daily officiated. Among those disused Feasts were the Conversion of St. Paul, SS. Mark, Barnabas, and Luke, which were not observed in the latter Times of the Anglo-Saxonic Church, as appears from the *Mnology* in Dr. Hicke's *Sax. Grammar*, pag. 203, &c. nor are they at this Day esteem'd Holydays of Obligation in the Church of Rome. When the Feasts last named were restored, as they were long before the Reformation in the Church of England, yet their Vigils were not restored : For by means of the Alterations aforesaid, a Distinction between Holydays with Vigils, and Holydays without Vigils now obtained. Those Feasts, which were instituted since this Distinction prevailed, are either of great Note in the Church of Rome, as the Nativity of the Blessed Virgin Mary, Corpus Christi, &c. or of lesser Note, as St. Michael, St. Anne, St. Joseph, &c. The

in this Matter) what is express'd by the *Evening, and going down of the Sun* in one Text, (*Deut. xvi. 6.*) is call'd the Time *between the two Evenings* in another (*Exod. xii. 6.*) And the Time of the *Evening Sacrifice* is express'd by this last Phrase, *Num. xxviii. 4.* And it is notorious that this was any Time between the Ninth and Twelfth, according to them; the Third and Sixth with us.

But observe, That tho' the Church Day begins at Six in the Evening, yet in our Liturgy the Rubrics are to be understood according to the *Civil Account, ad captum vulgi.* And for the same Reason, the first Month in the *Church Kalendar* is *January, viz.* because this is the first Month according to *Civil Account*, which this Island receiv'd from the *Heathen Roman Empire*, while it was subject to that *Civil Government*, and has retained ever since. Dr. Chamberlain indeed, in his *Present State of England*, Part 3. c. 2. tells us, 'That the Church begins

L 4

'her

former had *Vigils* assigned to them, the other none. This is no *Diminution* to the Feasts of St. John Evangelist, St. Stephen, St. Philip and James. For as the whole Advent may in some sense be consider'd as a *Vigil* to the Feast of Christmas with its attending *Holydays*; so the whole Lent may be taken as a *Vigil* to the Feast of Easter, and its attending *Holydays*; of which St. Philip and James is esteem'd to be one. And even the Annunciation hath no *Vigil* in the Church of Rome, when it falls in Easter-Week. So in the Eastern Church, one *Vigil* was kept both for Sabbath and Lords-Day.

224 *The Clergyman's Vade-Mecum.*

' her Year on the First of *January*; the State
' on the 25th of *March*: But I believe the Rea-
' der will rather believe the *Church herself*,
' which declares, that her *Supputation of the*
' *Year begins on the 25th of March. See Rubr.*
' *under the Table of Moveable Feasts.* As there-
fore the Church complies with the State in
reckoning *January* the first Month of the Year,
and in calling the last of *December, New-Years*
Eve, (Rubr. after the Collect for St. Stephen's
Day) in condescension to the Capacities of the
People, and to avoid Confusion; and yet ex-
pressly says, that the Ecclesiastic Year begins
not till *Lady-day*; so she does the same thing
in calling the beginning of the greater Festivals,
the *Evening next before*, namely, because
according to the State Account, the foregoing
Day is not ended till Twelve at Night: Tho' I
think all Divines, Rationalists and Canonists
are agreed, that the Sacred Day begins at Six in
the Evening, and which yet once at least, *viz.*
in the Collect on *Purification-Day*, the Church
mentions as part of the Feast.

This first part of the Festivals was, very
early among the primitive Christians, spent in
Hymns, and other Devotions; (*see the Martyr-*
dom of St. Ignat.) which were oftentimes conti-
nued till late in the Night, and were from thence
called *Vigils*; which *Vigils* were by degrees en-
larged, till at last the whole preceeding Day was
call'd by that Name: Nor only so, but latter-
ward they were so loath to part with their Re-
ligious Feasts, that they did not think them
ended at the beginning of the next Evening, but
lengthen'd out the Solemnity so long as the

Twis

Twilight continued: And what *Lyndwood* says of our *Lady-day*, may, I suppose, be applied to all other Feasts of the Church; viz. *Quoad Festivitatem, sive celebrationem Divini Officii, incipit Annunciatio, in primis vespers, finitur post secundas. L. 1. T. 3. c. Nullus verb. ante Annunciationem.*

C H A P. XXIII.

of PARISH-CLERKS.

There were of old, several Clergymen belonging to all Churches (that were not extreamly Poor) besides the Incumbent, and all of them were under the Inspection and Care of the Incumbent, or his Representative, who on this Account was stiled a *Prelate*: Greater Rectories were to have three, or two at least, in Priests Orders. *Prov. L. 3. T. 15. c. Ad instar.* These the Rector, or Vicar, might chuse at his own Discretion, without express Leave from the Bishop. *Const. Otho. ad Vicar. Gloss. in propriis Personis.* And they were to be maintain'd by the Incumbents, who gave them their Title, if they were not Ordain'd before. *Stilling. Eccl. Cases, p. 131, 132.* and these were called *Chaplains, Parish-Vicars, and Parish-Priests*; (for it does not appear, that Incumbents ever were so called). There were many Altars in most Churches, and the Business of these Clerks was to say *Masses* for the Dead, and to join with the

Incumbent in rehearsing the *Hours of the Bre- viary* in the Chnrch, especially on Festivals. *Const. Oth. Eccl. v. Altar.*

And it seems necessary, that there should have been as many in inferior Orders to attend those in the superior, whilst they were Celebrating. And let no one wonder how these were maintained, since it appears, that he who had only the Office of carrying the *Holy-Water*, was thereby provided of a Livelihood by the Alms of the People, which if they withheld, they were to be Censur'd, *L. 3. T. 7. c. a nostris.* And it should seem a Custom was growing up in *Lynd- wood's Time*, of giving them certain Fees every *Sunday*, and especially at the greater Festivals, and some Sheaves of Corn in Harvest. *Ibid.* It was sufficient, that they who thus attended the Priests, had taken any of the Inferior Orders, or if they were but *Psalmists*, and had the *Prima Tonsura*, of whom the Canonists sometimes dispute, whether they might be called *Clerks* or not.

From what has been said, it seems evident, that before, and at the beginning of the Reformation, there were several Persons to attend the Incumbent in performing Divine Offices, especially in larger Parishes, as there are still in Cathedral and Collegiate Churches; and these were all called *Clerks*, tho' they were not in *Orders*, at least not all of them; of these, that *Rubric* is, I suppose, to be understood in the Burial Office, *viz. the Priest and Clerk meeting the Corps, &c.* In some Choirs, those Singing Men who read the first Lesson, are called *Lay Clerks* (a contradictory Name it is not to be doubted)

doubted), but before the Reformation they were in some of the Inferior Orders, *Psalmists*, or *Lectors* at least; of this sort probably were those, who are, and have long since been called *Parish-Clerks*, whereof now there is but one in a Parish. See *Prov. L. 3. T. 1. Gloss.*

By *Canon 19* the Incumbent has the Choice of the *Parish-Clerks*, as he formerly had of the *Aquabajulus*: But as the People of old, in some Places, disputed this Right with their Rectors, and Vicars, so they have of late Years; and it has been several Times adjudged, that where the People have a Custom of chusing their *Parish-Clerk*, the Canon cannot alter it. *Godol. c. 17. sect. 15.* and that the Ordinary cannot Deprive the *Parish-Clerk*, tho' he may Censure, and Excommunicate him for any Fault; but they only who put him in, can deprive him. *Ibid.*

In some Places, where the Incumbent has an undisputed Right of chusing his Clerk, the Parishioners have pretended a Right of chusing a Saxton, to have the Privilege of the Bells, and digging the Graves; but I never knew that this was actually done in any Place, but where, of ancient Custom, there uses to be a Saxton, till about five Years ago this was practised at *Maidstone*, in the Diocese of *Canterbury*. And the Saxton there chosen, by a Majority of the Parishioners in Vestry, was confirmed by a Verdict at the Assizes there, the Lord Chief Justice *Holt* sitting on the Bench, and directing the Jury to find for the Saxton so elected. But here too, it was pretended, that before the late Rebellion, the two Offices of Clerk and Saxton, had been in two several Persons.

Parish-

Parish-Clerks, after having been chosen, and declared by the Minister, are usually Licensed by the Ordinary, and may sue for their Dues in the *Ecclesiastical Courts*. To have served the Place a competent Time without Objection, is sufficient without a License ; as I heard a certain Vicar-General to an Archbishop once declare in Court. When a *Parish-Clerk* is Licensed, he is sworn to obey the Minister. So all the old *Parish-Priests* and *Clerks*, took an Oath of Obedience to the *Rector*, or *Vicar*, of the Church. *Prov. L. i. T. 15.* So they that Officiate in any Chappel of Ease, do, to this Day swear Obedience to the Incumbent of the Mother-Church.

C H A P. XXIV.

Of Tythes and Offerings.

TYTHES are of three sorts, *Prædial*, *Mixed*, *Personal* : *Prædial Tythes* are such as arise wholly, or chiefly of the Earth, as of Corn, Hay, Under-Wood, Seeds, Herbs, Apples, Pear, Cherries, &c.

Mixed Tythes are such as arise from Beasts, and other Animals Pastur'd, or fed with the Fruit of the Earth ; as Colts, Calves, Lambs, Wool, Milk, Fowls, &c.

Personal Tythes are the Profits arising from the Labour, Art, Trade, Navigation, Industry of Men.

Gre

Great Tythes are the Tenth of Corn, Hay, and Wood only. All other are Small, Privy, White, or *Minute Tythes*. And Wood hath twice been adjudged a small Tythe. *Parf. Counf.* 177.

Since the Statutes for dissolving Monasteries, Laymen are capable of Tythes in *Pernancy*, and may sue for them, either in the Ecclesiastical or Temporal Courts.

Unity of Possession does not extinguish *Tythes*, inasmuch that the Glebe itself is Tythable; and if a Rector lease his Tythes, and reserve his Glebe, and sow it, he shall pay Tythes thereof to the Lessee, unless there be in the Lease special Words to the contrary. *Watf. c. 47. p. 404.*

And if a Parson lease his Glebe-Land, and do not grant the Tythe thereof, the Tenant shall pay Tythe to the Parson. *Godol. c. 23. G.*

And in case a Parsonage formerly belonged to a Monastery, and there were certain Lands in the same Parish, that belong'd to the same Monastery, and therefore paid no Tythes, while the Parsonage and Lands belonged to the same Body; yet since the Dissolution, if the Parsonage be come to one Owner, and the Lands to another, they shall pay Tythes; except it can be made appear, that both the Parsonage, or the Lands came to the Monastery before the *Stat. 1 Rich. II.*

TYTHE in KIND.

The Manner of the Payment of Tythes, is govern'd by the Custom of the Place, as in Sheaves, Shocks, Cops, Cocks, or the like. The Par.

Parson, or Vicar, or their Farmer, cannot come himself and set forth the Tythes, without the License or Consent of the Owner; if he do, and carry it away, he is a Trespasser; but a Parson, or his Agent, may come and see the Tythes set forth, and *he who stops the Parson, or his Servant to view, as well as take and carry away, his Tythe is liable to the Penalties of the Statute 2, 3 of Edw. VI. c. 18.* Nay, the Parson may spread abroad and dry his Corn, Hay, &c. upon any convenient Place on the Ground where it grew, till it be fit to be carried into the Barn. *Watf. c. 54. p. 478.*

Tythes may be carried from the Ground, either by the common Way, or any Way that the Owner of the Land uses to carry away his nine Parts. And he that does not set out, and let the Parson view, and carry away his Tythes, shall pay *treble Damages* in the Temporal Court, *but no Costs*; *double value in the Spiritual Court, with Costs.* 2, 3 *Edw. VI. c. 13.* but this only extends to *Prædial Tythes*.

By the Civil or Canon Law, notice shall be given to the Parson, by the Owner, when the Tythes are set forth; but not by the Common Law. *Godol. c. 33. sect. 58.*

But in case the Owner sue the Parson, as he may, for neglecting to carry away the Tythe in time, he must prove that he first gave notice that they were set forth. *Watf. c. 54. p. 482.*

If Tythes set forth remain too long upon the Land, so as to do Damage, the Owner may take them; a Jury is to determine when they have remain'd too long. *Ibid.*

When once the Tythes are set out, the Owner is not accountable for them to the Parson, if a Stranger take them away. *Watf. c. 58. p. 521.* except some Collusion appear.

F R U I T.

Tythes shall be paid of Fruit growing in Orchards, tho' Tythe of Corn, or Hay have been paid the same Year from that Ground; and the Tythe of Fruit is due when gather'd. *Godol. c. 32. F. O.*

If the Ground be so rich that it produces two Crops of Hay, Wood, &c. in one Year, Tythe shall be paid of both, without special Custom or Agreement to the contrary. But for the Aftermath, Stubble, or Fallow, no Tythe shall be paid of *common Right*. Nor shall any Tythe be paid of Rakings, unless it appear that Fraud was used. Tythe shall be paid of self-sown Corn. *Watf. c. 49. p. 438.*

A Custom has of late Years prevail'd in some Parts of *England*, to compound for the *Minutæ Decimæ*, according to the number of Acres plough'd and fallow'd: so that he who has had 12 Acres of such Land, has paid two Shillings by the Year, in lieu of all Tythes of Pigs, Fowls, Eggs, &c. and so in proportion for any greater or less Number; and I have known that a Parson has had a Verdict for such Composition; but I do not meet with any Judgments in this Case mention'd in the Books.

In this case Tythe is not paid for the Stubble, but the quantity of the Stubble is the Measure by which Privy Tythes are valu'd.

HEMP

HEMP and FLAX.

Tythe of Hemp and Flax is ascertain'd by Stat. 11, 12 W. III. viz. 5s. for every Acre sown, to be paid before it be carried off from the Ground.

But no Land discharg'd from Tythe by *Modus*, or otherwise, is charged by this Act.

Land sown with Flax or Hemp, since Feb. 2. 1684, and before the second of Feb. 1691, and which within that Time paid Tythe in Kind, shall still do so, this Act notwithstanding.

H O P S.

Hops are commonly reckon'd small Tythe; but how the Tythe of them shall be set forth, is not agreed, whether by the tenth Pole, or by Measure, say those who have writ on this Subject; yet it is said lately to be adjudg'd, that they shall be taken by *Measure*, after they are pluck'd from the Bine or Stem: but the Owner is not bound to dry them, before he set forth the Tythe. *Watf. c. 49. p. 448.*

There can be no *Modus* for Hops, because of late Date; but they may be included in a *Modus pro Decimis minutis*; that is, if a certain Sum of Money be paid in lieu of all small Tythes whatsoever, this cuts the Vicar or Rector off from taking Tythes of Hops, as well as other things. *Ibid.*

LAMBS,

LAMBS, WOOL, &c. CALVES, PIGS, &c.

Tythe of Lambs, Calves, Pigs, &c. is to be paid, when they are so old that they can live without the Dam, and on such Food as the Dam does, as all agree.

The Canon of Abp. *Winchelsey*, A. D. 1305, orders Tythe of Lambs to be paid in this manner, viz. 'If the Owner have six Lambs, or any less Number, he shall pay a Half-peny for each Lamb, instead of Tythe; if he have seven Lambs, one of them shall be paid for Tythe, and the Parson shall pay Three Half-pence to the Owner; if the eighth Lamb be paid for Tythe, the Parson shall pay the Owner one Penny; if the ninth, a Half-peny; or else the Parson shall stay till another Year, and receive the tenth Lamb in Kind, if he please; and then the next Year he shall have the second or third best of the Lambs for his Patience: And so likewise must Tythe of Wool be paid." This Canonical way of paying these Tythes does still prevail in many Parishes, and is now kept up as a legal Custom, only that instead of the seventh or tenth Lamb, 1s. or the like Sum, is paid by the Owner; and 'tis not left to the Parson's Choice, whether he will take this *Modus*, or stay till the next Year; for this, says Sir S. Degg, p. 202. is not allow'd by our Law, for Tythes must be paid annually. Thus Clergymen are forbid to take that just Advantage which the Canon gave them, but are forced to submit to that part of it, which is a Diminution of their Original Right; that is, to take

take Three-pence for the Tythe of fix Lambs which yet, when the Canon was made, was undoubtedly the full Value of the Tythe, for so the last Words in the Paragraph do in effect declare, viz. *Et hoc ad valorem decimæ, Et ad commodum Ecclesiæ.* *

Sir *S. Degg* mentions much such a Custom, on *Modus* of paying Calves, p. 255.

And in many Places Tythe of Pigs is so paid, that the Parson has one if there be seven, none if fewer; no more if never so many at one teaming.

Wool is to be paid on the Sheer-Day; and if the Heads and Necks be fraudulently sheered before, Tythes shall be paid of that too. *Wat. c. 50. pag. 452.* If a Man's Sheep die of the Rot, or the Owner kill them, he must pay Tythe of the Wool, but not the Skins. *Wat. cap. 50. p. 452.* nor Flesh of Sheep kill'd to be eat in his own House.

Milk

* 'Tis true, *Bishop Stillingfleet* thinks it incredible that a Lamb of a Year old should be worth but 5 d. *Eccl. Cas. p. 312.* but (with all due respect to so great a Name) 'tis rather to be wonder'd that it should be worth so much. For the *Stat. of Assize* made 51 H. III. less than 40 Years before this Canon, supposes that a Quarter of Wheat might be sold for 12 Pence. In *Lyndwood's Time*, a Lamb was worth 9 d. or 10 d. he wrote A. D. 1430.

Milk, Herbage, Fowls, &c.

It has been adjudged, that where Tythe of Milk is due in Kind, it shall be paid by giving the Parson every tenth Meal, and be sent to the Church-Porch, or Parsonage-House. *Watf. c. 50. p. 451.* in which this Tythe differs from all others, which must be fetch'd by the Receiver: And I fear this Rule is not to be depended on, except it be supported by local Custom.

Herbage is to be paid for barren Cattel, which yield no Profit to the Parson; but no Herbage shall be paid for the Agistment of Cattel, which a Man breeds for his own use, for the Plow or Pail; or which are to be so employ'd in the same Parish, without special Custom. *Watf. c. 50. p. 455.* So if a Man eat a Ground with his own Saddle-Horse, no Tythes shall be paid thereof; but an Inn-keeper, or he that takes in Stock to keep, shall pay for the Ground so eaten.

No Tythe is due for Deer, Conies, Wild-Ducks, &c. without special Custom.

Acrons, or Mast, if gather'd, shall pay Tythes. *Godol. c. 33. A. O.*

Bees pay Tythes by the Tenth Measure of Honey, and the Tenth Weight of Wax. *Ibid. B.*

Doves kept in a Dove-House, if sold, shall pay Tythes; and by Custom Tythe may be paid for those eaten in a Man's own House. *Ibid. D.*

Where Tythe of Eggs is paid, there no Tythe of Young; and where Tythe of Young, there no Tythe of Eggs. *Ibid. E.* And so where Tythe of Milk is paid, there no Tythe of Cheese

Et converso. Ibid. C. Where Tythe is paid of Lamb and Wool, none due for Pasture of the Ews.

Barren Heaths being inclosed, and otherwise improved, for the first seven Years are discharged of Tythes in Kind; but shall, during that seven Years, pay such Tythes as have been accustomedly paid before; by Stat. 2 Edw. VI. c. 13. But Lands gained from the Sea, and grubbed Wood-Land, shall forthwith pay Tythes in Kind. See *Godol. ibid. B.* But if the Wood-Land were before free from Tythes, *Quære.* It certainly ought in reason to pay: For Salt-Marsh, never yielding any Tythes before, when drained, pays Tythes. And it may justly be supposed, that the Reason why it did not pay Tythe before, was, that Wood pays no Tythe by the *particular Custom* of some Places; not that the Land is discharged.

No Tythe shall be paid of those things which do not increase, as Stones, Turf, Tin, Lead, &c. of *common Right*, and yet by *special Custom* Tythe may be due of these things; and even of Lime, Ale, white Salt, &c. *Watf. c. 46. p. 367.*

If Cattel do feed one half of the Year in one Parish, and the other half in another, the Tythes shall be equally divided between the two Parsons, and so proportionably for any greater, or less time; provided it be 30 Days: but for less time than a Month, no Tythe is payable. *Ib. C.* If Corn, or other *Prædial Tythes* grow in a Field which is divided between two Parishes, the Owner has nothing to do, but fairly to set out his Tythe. If one of the Parsons take more than his due, the Owner is not accountable for that, but he who did it. *C. 54. p. 478, 481.*

WOOD.

W O O D.

By Stat. 45 Edw. III. c. 3. No Tythe is due of great Wood, of the Age of twenty Years, or of greater age. By * great Wood is commonly understood, Timber for building Ships, and Houses; such as Oak, Ash, Elm, and in Buckinghamshire Beech is accounted Timber, and pays no Tythes. *Watf. c. 49. p. 444.* But Willows, Haskels, Holly, Maples, Birch, Alders, Thorn, and all Coppice, or Underwood of what Age soever, is Tythable. *Ibid. 445.* But if they are for Fuel in the Owners Houses (being Farm-Houses in the same Parish, for the Maintenance of Husbandry) or Wood used for fencing the Owner's Corn, they are not Tythable, without special Custom; except it be given or sold, for then it shall, it seems, pay Tythe. *Ibid. 444.*

Wood used for Hop-Poles in the Parish, where the Parson, or Vicar hath Tythe of Hops, shall pay no Tythe. *Ibid.*

If Oak, Ash, Elm be cut, and under twenty Years growth, they shall pay Tythe, as *Sylvæ caduæ*. And so if a Timber-like Tree be lop'd under 20, it shall pay Tythe for that one time, but not when 'tis lop'd again, and is above 20; *Godol. ibid. T.* But there is a Precedent, *Watf. c. 49. p. 444.* that a Timber-Tree once lopt, and paying Tythe, when under-age, shall continue to do so: But I fear 'tis not to be depended on.
No

* Some Books instead of great Wood, have under Wood, by an evident, tho' I hope not wilful Mistake.

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No Tythe shall be paid on the Tops, Roots, Barks of Shoots of Timber-Trees; and this tho' the Tree itself be grown rotten, and fit for nothing but the Fire. *Godolph. ibid. T.*

If Wood-Ground be mixt with Woods Tythable, and Woods not Tythable, that is, with old Stocks, or Trees above 20 Years old, but some Spray or small Underwood, and all be cut down and faggoted for Fuel promiscuously, and the greater part be such as are not Tythable, it shall Privilege the rest; and so *è converso*, *Watf. ib. 445.* If a Man cut down Trees which have born Fruit, as Apples, Cherries, &c. whereof Tythe has been paid, no Tythe shall be paid of Faggots, or Billets of the Trees. *Ibid. 474.*

Of Nurseries of young Trees sold, and to be transplanted in other Parishes, Tythe shall be paid. *Godolph. ibid. N.*

The manner of paying Wood in kind is, either by measuring out the tenth part of the Ground, the tenth Rindge, or the tenth Load of Faggot, according to the Custom of every Country, or Parish.

If a Coppice, or Hedge-row be grubbed up, in order to convert the Ground to Tillage, Tythe shall be paid not only of the Branches, but Roots: But if the Wood be first cut down, and tythed, and then afterwards the Roots grub'd up, 'tis said, Tythe shall not be paid of the latter. *Godol. c. 49. p. 441.*

Tythe shall likewise be paid of Heath, and Broom, *Ibid.* without a Custom, or Discharge to the contrary.

They who take, or carry away the Tythe, *Stat. 2, 3 Edw. VI.* without first making Satisfaction

isfaction to the Parson, are liable to the Forfeiture of double Damages in the Ecclesiastical Court, with Cost of treble Damages in the Temporal Courts without Cost.

If the Owner pretend that he had sold the Corn or Wood to another, and that he carried it away, yet still the Owner may be sued: Because (says the Law) this was done to defraud. *Watf. c. 54. p. 479.*

At Common Law, the Parson may sue either the Buyer or Seller. *Parf. Counf. p. 196.*

If a Man cut Wood for burning Bricks, for the necessary Habitation of himself and Family, within the same Parish, it shall not pay Tythe: But if it be for the Enlargement of his House, for Pleasure and Delight, Tythe shall be paid: and so it shall be if the Bricks be burnt for a House in another Parish. *Watf. c. 49. p. 443.*

A portion of Tythes in one Parish may belong to the Parson or Vicar of another Parish, whether by any ancient Custom, or Composition, or by grant of the Parson, Ordinary or Patron.

H O U S E S.

Tythe of the Rent of Houses is not due of common Right, and yet has anciently been paid in some places, and is by *Lyndwood* called a *Prædial Tythe*. *L. 1. T. 3. c. Nullus. v. Fructus*; and by *Stat. 2, 3 Edw. VI. c. 13.* there is a special *Proviso* for the *Inhabitants of London, Canterbury, and other Towns, which used to pay Tythes by their Houses*: And other Acts were made for securing this Payment to the City-Clergy: But by *Stat. 22, 23 Car. II.* these Tythes are

are reduced to certain Annual Sums Quarterly paid in the City of London: And every antient City and Borough hath for the most part such Custom, *De Modo decimandi*, for their Houses for Maintenance of their *Parsons*. See *Wass* c. 46. p. 388.

M I L L S.

Tythe of Corn-Mills erected since 9 *Ed. II.* c. 5. shall be paid. For then it was Enacted, that *no Prohibition shall be granted, if Tythe be demanded of a Mill newly Erected*; the Reason why this is called by some *Canonists* a *Prædial Tythe*, is, I suppose, because the Toll-Corn whereof Tythe is to be paid, is the Fruit of the Earth, tho' others will have it a *Personal Tythe* as being the tenth part of the Profit which the Miller gets by his Labour, and the working of his Engine.

Sir *S. D.* says the tenth Toll-Dish is no where paid, and that 'tis only a *Personal Tythe*, and must be paid with the Deduction of Expence and Charges. p. 211.

If a Mill have used to pay Tythe, it shall be presum'd that it was erected since the 9 *Edw. I.* and if it have not formerly paid Tythes, it shall be presum'd that it was erected before that Act and consequently no Tythes shall be paid, unless the contrary can be proved.

If a new Mill be erected, tho' it be on Land discharged of Tythes by the 31 *H. VIII.* 13. yet the Mill shall pay; if a Mill be erected on Land for which a certain Sum of Money, by way of *Modus*, has been paid time out of Mind, it has

been adjudg'd, that no Tythe shall be paid for the Mill. Dr. *Watson* argues for the Legality of the first Case, and against that of the latter. C. 51. p. 461.

If there be a surmise of a Custom, that such a certain Rate is to be paid for all Mills in such a place, this Custom will hold for the old Mills: but any new Mill there erected, shall not be privileg'd by this Custom; and yet when this Custom has prevail'd in two Hundreds, tho' in several Counties, it has been held a good Custom. But these last Mills were erected for the Use of common Bakers.

Fulling-Mills, Paper-Mills, &c. do of common Right pay no Tythes, but by Custom they may: But then it shall be intended only a *Personal Tythe*, in consideration of the Art and Labour of the Owner; *Godol. M. c. 33*. And yet sometimes it hath been adjudg'd, that the tenth Penny of the Profit of such Mills should be paid; *Ibid. viz.* if there be a Custom so to do.

If two Fulling-Mills be under one Roof, and Rate-Tythe paid for them, and they be converted into one Corn-Mill, the Rate is gone, and Tythe due, as for a New Mill.

If the Stream which turn'd two Water-Mills, for which 6 s. 8 d. was yearly paid, changed its course; and one of them was rebuilt in the place where the Stream now runs, the antient *Modus* was held to be good, but the Court declar'd it had been otherwise, if the Stream had been turned by the Owner; *Ibid.*

Tythes may become due to a Parson, for Profit receiv'd from a Place that is not within his parish; for by *Stat. 2, 3 Edw. VI. c. 13. Tythe*

of Cattle feeding in a Waste, or Common, where the Parish is not known, shall be paid by the Owner of such Cattle, where he dwells.

Lands designedly laid under Water by the Owner, or let out by him to others for the same Purpose can pay no Tythes, because they produce no kindly Fruits; but a Recompence for Tythes shall be paid by him, or them for whose benefit the Land is laid under Water: and the Recompence must be rated either according to the Value of the Tythe, which it yielded before it was laid under Water; or by the Rent which is paid for it, if it be hired: So the Commissioners of the Sewers pay a Pound Rate to the Incumbents for the Lands when they hire for an *Inlet* to secure the Level.

PERSONAL TYTHE.

All *Personal Tythe* is due to the Parson of the Parish where the Party dwells, tho' he go into another Parish to exercise his Art, or Industry. So the Tythe of Fish, or any other Game caught at any other place belongs to the Parson where the Fisher or Fowler dwells, unless he be paid for leave to fish or fowl: For then by the Canon Law Tythe is due where it is caught.

But *Personal Tythes* shall only be paid where they are due by Custom: And where they are due by Custom, 'tis only the Tenth Part of the clear Gain, all Charges and Expences deducted. Stat. 2, 3 Edw. VI. c. 13.

Fish taken at Sea are by the said Statute tythable, according to the Custom of the Place where they are landed, and not otherwise; and where

where no Tythe has been paid of Fish, none can by Law be claim'd.

COMPOSITION VOLUNTARY.

Tythes, especially Vicar's Tythes, are in many Places paid by Voluntary Agreements, and by Annual, half Yearly, or Quarterly payments in Money. In which case, if the same Sum have been paid for several Years together, and the Incumbent resolve to raise the Occupier, he must give notice to him before the beginning of the Year, that he intends to take his Tythe in kind, unless he comply with his present Demands: Without such notice the former Composition will stand for the ensuing Year.

Custom and Prescription against paying Tythes.

Custom or *Prescription* is a Discharge from paying Tythes, either in whole or in part. *Custom*, when strictly understood, relate to some Country, or Parish, so discharged. *Prescription*, to some particular Land, or Form.

A *Modus* is that Payment in Money, or whatever else it be, which is by *Custom*, or *Prescription* paid in lieu of the whole Tythe in kind.

The Common Law indeed expressly allows of such *Prescription*, or *Custom*, but what commenced before the first Year of *Rich. I.* but if the Incumbent cannot prove the contrary, it shall be presum'd to have its beginning before that Time: the Ecclesiastical Court allows forty Years to be a sufficient time for a *Prescription*.

Monasteries might, and Churchmen now may prescribe *de non Decimando* for their Church Estates: that is, if they have not paid Tythes for them time out of Mind, they cannot be obliged to pay for the future; not that any Lands are freed from Tythes, merely because they belong to the Church. And all Lands of Religious Houses, which came to the Crown by 31 H. VIII. c. 13. which before their coming in to the King's hands, were discharged from Payment of Tythes, shall so continue: And by this Act were given to the King all Monasteries, Priories, &c. of above 200 *l. per Ann.* which were near 200 in number, a Catalogue of which you may find in *Degg, Dugdale, Speed, Watson* and these Lands are, to this Day, exempt from Tythes, in whose Hands soever they be.

But the Lands of those Religious Houses which came to the Crown by 27 H. VIII. c. 28. and which were those that did not exceed the Value of 200 *l. per Ann.* when they came into the Hands of the King and his Patentees, were adjudged to have lost this Privilege of being exempt from Tythe; because there were no express Words in the Act to discharge these Lands from Tythes, tho' they were by the Act given to the King, in as large and ample manner, as the Abbots, &c. had the same. Of this see *Watf. c. 48. p. 413, &c.* and Sir S. D. gives it for Law, that the Lands of the Religious, which were given to the Crown, 32. Hen. VIII. are not freed from Tythes: *P. C. p. 280.*

The King may also prescribe, *De non Decimando*, and so may his Farmer, or Lessee, but not his Feoffee, *Watf. cap. 47. p. 405.*

Custor

Custom against paying TYTHE-WOOD.

A Country may prescribe, as the Law Books tell us, *de non Decimando*, as to some particular Matter; so the *Weald* of Kent and *Sussex* have a Prescription against Tythe of Wood: And yet there is a Precedent express for the Payment of Tythe-Wood there, by the Judgment of Coke, and the other Justices of the King's Bench, 12 *Jac. Watsf. c. 49.* 446. But it should seem now the Prescription against paying Tythe-Wood in those Countries is establish'd: The Occasion of this Custom seems to have been this, that the Tythe of Wood in those Places was of so little Value, that it was not thought worth demanding or receiving: for it is certain that this Country was one continued Wood, and that of 120 Miles in length, and 30 in breadth, if we may believe the *Saxon* Chronologer, *ad annum Christi 893.* See *Camden* in *Sussex*.

Some indeed, to make this Custom seem more reasonable, and make way for more of this sort, have said, without any reason for it, that Tythe of Wood is not due *Jure communi*; they would have it, that 'twas never paid till the time of Archbishop *Stratford*, who made a Canon for it 1342; whereas he, in that very Constitution, says, 'twas only *some of his Province* that withheld these Tythes, and that *they were notoriously due*, L. 3. T. 16. c. *Quanquam*. He adds indeed, that they pleaded Custom; and therefore it is probable, that he means the People in *the Weald*, which, by this time, was generally cultivated and inhabited, and part of which was his own Diocese.

And 'tis a Mistake to think, that † this was the first Constitution to this Purpose; Archbishop *Winchelsey*, near 40 Years before, in his *Constitution* *Sanct. L. 3. T. 16.* had decreed Tythes to be paid *de Proventibus Boscorum---Arborum, &c.* and they who will suppose that this was the beginning of Tythe Wood, may, by the same Reason, affirm, that Tythe of Milk, Cattel, Wool, Flax, Grain, &c. had never been paid before; for they likewise are by this Constitution requir'd to be paid. So that I see no Reason to doubt, but that Tythe hath been paid of Underwood, as long as any other Product of the Earth, and by the same Law, and Reason; save only that in Countries which abounded, or were overgrown with it, the Clergy at first would not, and therefore now are not by the *Temporal Laws* permitted to receive it.

It is indeed most probable that Tythe of *Timber-Trees* never was due *Jure Communi*, and that therefore the *Statute 49 Ed. III.* whereby 'tis enacted, that, *if Tythes of great Wood, of 20 Years or greater age, be sued for in the Spiritual Court, Prohibition shall be granted,* is but an Affirmation of the Common Law of the Realm. Nor were the two Constitutions aforementioned so understood by the *Canonists*, as if by them

Tythe

† *In Lyndw. the Constitution of Winchelsey is placed several Leaves after that of Stratford, tho' made long before it. This seems to have given occasion to some to say, that Tythes of Wood were first requir'd to be paid by Stratford, not at all considering, that Winchelsey came to the Archbishoprick 39 Years before him.*

Tythe were to be paid of Trees used for Building. See *Lynd. in Gloss. c. Sancta, v. Arborum.* Perhaps indeed some, by mistake, might demand Tythe of Timber-Trees, as supposing they were favour'd in their Demands by those Constitutions; and this might be the Occasion of the Statute, which was made about twenty nine Years after *Stratford's Constitution.*

It has been before observ'd, that two Hundreds have, by our Temporal Courts, been allow'd capable of prescribing against paying Tythe of a *Mill newly erected*, and from which therefore Tythe was due by Act of Parliament. A strange Judgment!

A Man being sued for Tythe of Ew-Milk, alledg'd, that no Tythe of Ew-Milk, by the Custom of the Country, had been paid in the Memory of Man, and so had a *Prohibition* granted him. *Watf. c. 50. p. 450.*

COMPOSITION REAL.

A Layman might be discharg'd of Tythes by *Composition Real*; which is, when the Incumbent, with the Consent of Patron and Ordinary, under Hand and Seal, agrees that certain Lands shall be discharged from Tythe in Kind, by reason of some Recompence to the Incumbent in Money or otherwise; and such Composition shall bind the Successors: But since the 13 *El. c. 10.* no such Composition can be legally made.

A Grant of Tythes from Parson, Patron, and Ordinary, without any Recompence or Consideration, is good, and shall save a Man from paying Tythes, but it must be well proved; for if

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it run into *Prescription* it dies. *Watf. c. 47. p. 407.* And now by 13 *Eliz.* no Grant may be made for the future.

Parishioners may prescribe against the paying Tythe of some one thing, as *Wood*, by alledging, that the Parson and his Predecessors have had such Lands in recompence of such Tythes not paid in the Memory of Man; and it is not necessary that they shew how, or by what Title the Parson had the Land; but if they had it in any other manner than as a Satisfaction for such Tythe, the Parson himself ought to shew that. *Watf. c. 47. p. 409.*

So that tho' 'tis said, a Layman cannot prescribe *de non Decimando*, yet if he have any of the Abbey-Lands, given to the Crown by the 31 *Hen. VIII.* and which were exempted from paying Tythe before they came to the Crown; Or, if he be the King's Tenant, he may prescribe against paying any Tythe of such Land as he holds by these Titles; and from some particular Tythe he may be freed by the Custom of the Country, or Hundreds, in which he dwells: And a Parish or Hamlet may be excused from paying Tythe of some Particulars, by surmise of some Compensation made to the Parson, if such Tythe have not been paid Time out of Mind. *Modus & Custom.*

The Canon Law allowed no Agreement for Tythes to be good *for the time to come*, without consent of the Ordinary; however, not except what was paid were to the full Value of the Tythes, or *in Commodum Ecclesiæ*: But when good-natur'd Incumbents were prevail'd upon, tho' contrary to the Canon-Law, to make dis-

advan-

advantageous Compositions with their Parishioners, tho' the Spiritual Courts would have had no regard to these Agreements, yet so long as the succeeding Clergyman sat down contented with the imprudent Bargain that his Predecessor had made, the Remedy which the Canon-Law provided was to no purpose: Till at last this Temporary Agreement grew into a Custom, and the Common Law made it unalterable, and prohibited the Ordinary in such Cases to proceed, and give the Clergyman his Ancient Right; and thus thro' the Easiness of their Predecessors, the present Incumbents have only a Feather, where a Goose was formerly due; and in many Places the Incumbent scarce receives the Tenth of the Tenth in real Value: And this is a growing Evil, considering how the Value of Money has been sinking for 200 Years last past, by reason of the great Increase and Abundance of it: And so the Prosperity of the Nation may prove the Bane and Impoverishment of the Clergy, by reason of these most unreasonable *Modusses*. The Bishops foresaw the ill Consequences of these Compositions, but the Clergy did not, and so neglected to use that Caution which their Superiors gave them. Now indeed the Spiritual Courts do allow of *Modusses* too. *Watf. c. 57. p. 5.* For it is in vain to contend, when they are so much overmatch'd.

Any one may prescribe to pay a *Modus* in lieu of Tythes in Kind, for any certain Parcel of Land, either in Money, or any other thing; and tho' the *Modus* be not paid, yet cannot the

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Parson sue for Tythes in Kind, but for the Money, &c. *Godolph. c. 33.*

A *Modus* being a Payment which becomes due by Common Law, may therefore, in the Opinion of good Lawyers, be recover'd by an Action of Debt, or of the Case in any Common-Law Court; but then it lies on the Incumbent to prove the *Modus*, if there be occasion to prove it, and this few will care to do.

If a Tenant do pay Tythe in Kind, yet this shall not extinguish the *Modus* as to the Landlord, or Leassor. *Ibid.*

If a *Modus Decimandi* be for Hay, and the Party soweth the same with Corn seven Years together, and pay Tythe of his Corn in Kind, this shall not destroy the *Modus Decimandi*, but the same shall continue, when 'tis again laid down for Hay. *Ibid.*

And generally speaking, these *Modusses* when they are grown so old, as that no Man living can be found, who will testify the knowledge of the contrary, or except there be some Record in being that contradicts them, cannot be set aside. But I will give some Instances of them, which have not been allow'd to be good in Law.

If a Prescription be laid, to pay a *Modus* for 100 Acres, or for several things, and there be a Failure in one Acre, or one Thing, it is Failure of the whole Prescription. *Ibid.*

A *Modus* paid to the Parson shall not be a Discharge of Tythes, as to the Vicar. *Ibid.* And yet Sir S. Degg produces a Precedent to the contrary. *P. 259.* Whether a *Modus* to the Vicar be a Discharge against the Parson. See *Parson's Couns. p. 259.* Where he seems to think, that

that it is so, when paid time out of mind, or by Endowment.

To surmise, that on consideration of paying Tythes of Corn, and Hay, and other things in other Parts of the Parish, and therefore the Parishioners are privileged from paying Tythe of Rough Hay growing in the Marshes, was not allowed to be a good *Modus*; for this was in effect, a *Modus de non Decimando*. *Watf. c. 47. p. 406.*

When one prescribed, that he expended the *Profits* of his *Lands* in repairing the Church, &c. this was held no good Prescription; and 'tis a general Rule, that *no Modus is good, but when something is paid, or done for the benefit of the Parson*. *Watf. c. 47. p. 409.*

If a Man prescribe to pay one Penny, or *thereabouts*, for the Tythe of every Acre of Arable Land, or for 4s. for every Days plowing of Wheat, in both Cases the *Modus* is naught, because of the Uncertainty. *Watf. c. 47. p. 410.*

When the *Modus* is special, as for Hay, it will be destroyed, if the Ground be converted into a Hop-Garden, or Tillage. *Ibid. 411.*

A Prescription to pay certain Sheaves of Corn, in lieu of all Tythes of Corn, was adjudged not to be good: And yet when one did surmise to pay in one part of his Land, the third Part of the Tenth; and in another half, for all manner of Tythes, this has been held a good Prescription. *Watf. c. 49. p. 436.*

It is said to have been adjudged, that if one prescribed to pay the Tenth part of Corn in the Sheaf, for the Tythe of all that is in the Sheaf, and of all that is raked, it is a void Prescription;

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on ; becaufe Tythes ought to be paid of both. *Ibid.* 437. And yet it hath often been adjudged that Rakings are not Tythable, except more than is necessary be fraudulently left.

A Prescription to pay the tenth Part of Corn, and upon that account to be quitted from paying Tythe of Hay growing upon the Head-Lands is void : But it seems a Prescription not to pay the Tythe of Hay growing upon the Head-Lands is good without any Consideration, if the Head-Lands be but big enough to turn the Plough. *Ibid.*

A Custom to pay Tythes in Kind for Sheep, if they continue in the Parish all the Year, and but an Half-peny for every one fold before Shearing-time, was held an unreasonable Custom. *C. 50. p. 453.*

A Prescription, that the Parishioners shall set forth the Tythes *sine visu, sine tactu*, of the Parson, is not good. *Ibid.* 452.

A *Modus* to pay a Tythe-Calf, or 2 *d.* for every Milch-Cow, and 1 *d.* for every Calf, in discharge of Tythes of all other Cattel, is not good. *Parf. Counf. p. 255.* But 'tis good for the Calves and Milk. A Suggestion that a Parishioner has spent all his Hay on the Beasts of the Plough, shall not free him from paying Tythe-Hay. *Ibid.* 256.

A Suggestion that all Occupiers in such a Village have used to pay 2 *s.* 6 *d.* in full of all the Tythes of the said Village, was by the Court held not to be good ; but if it had been that *quilibet Occupator* had used to pay any certain Sum, it had been good. *Watf. c. 49. p. 389.*

When it was alledg'd, that a Load of Hay used to be paid for all Tythes of Hay growing upon cer-

certain Land; and farther, that they used to make their Grass into Hay by their own Labour, this was held no good *Modus*: For that the Parishioner ought to make his Grass into Hay, and this is but Tythe in Kind: And yet it has been held, that to make the Parson's Hay is more than the Parishioner is bound to, and may be a Consideration of Discharge, from some other thing. *Watf. c. 49. p. 440.*

The Barons of *Exchequer* have declar'd in the Case of the Vicar of *Lyd*, that a *Modus* to pay One Shilling for every Pound of Rent in discharge of all Vicar's Tythes, is no good *Modus*; because a *Modus* is a Payment of some certain Thing, whereas Rent may rise and fall: And I am assured that the Judges of the *King's-Bench* and *Common-Pleas*, who were consulted in this Case, were clearly with the Barons in this Judgment. The Case is the same, if 2 or 3 s. be paid for every Pound of Rent.

The greatness of the Sum paid in lieu of Tythes is, in the *Exchequer*, on all hands, allowed to be a violent Presumption, if not an undeniable Argument against the Establishment of it as a *Modus*. Thus when sixteen Shillings was pretended to be paid as a *Modus* for Land rented at Twenty Pounds *per Annum*, and a Mark for Land rented at Eighteen Pounds, the Court judged these Payments too large to be esteemed *Modusses*.

PARKS DISPAK'D.

If Ten Shillings, or any certain Sum of Money be yearly paid for a *Park*, and afterwards the *Park*

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be converted to Tillage the *Modus* is gone, and Tythe shall be paid in Kind: But if the *Modus* were paid for so many Acres of Land contained in the Park, the *Modus* still holds; and so it is if it be paid for such a particular Park, says *Watf. c. 47. p. 411.* and Sir S. Degg, p. 258.

If a certain yearly Sum be paid for the Deer and *Herbage* of the Park, this *Modus* ceases when 'tis plow'd for Corn, &c. But if the Money were paid for all the Tythes of the Park, the *Modus* still holds, and no Tythes are due in Kind.

If the *Modus* be to pay two *Shillings*, and the *Shoulder* of every Deer that is kill'd in the Park, it has been adjudg'd, upon its being dispark'd, to pay Tythe in Kind; but when the *Modus* was to pay two *Shillings*, and the *Shoulder* of every third Deer, it was argued by the Judges, whether this *Modus* ceased upon converting the Park to Tillage, but they came to no Resolution.

If the *Modus* be to pay a Buck and a Doe out of that same Park which is now dispark'd, the *Modus* is gone; but if only to pay a Buck and Doe at large, the *Modus* remains, tho' the Park be disparked. See *Godolph. c. 33. P. Watf. c. 47. p. 411, 412.* where you have all these Cases concerning Parks.

And if there be no *Modus* paid for the Park, then the Case seems very clear, and all, I think, agree that Tythes shall be paid when 'tis converted into Tillage. For the Reason why it did not pay before, was not, because the Soil was discharg'd, but because Deer are said to be *feræ naturæ*, and therefore don't pay Tythes of com.

common Right. And what is said of *Parks*, may be apply'd to *Warrens*.

The Barons of *Exchequer* have declar'd, that Debts for Tythes ought to be paid before Debts on simple Contract, which sets them on a Level with Bonds. I find some are of Opinion, that they are preferr'd before them.

M O R T U A R I E S.

The second best Animal was of old paid upon the Death of any Person, to the Incumbent, in Satisfaction for all Tythes designedly, or undesignedly substracted by the Deceased during his Life-time : But now, by *Stat. 21 H. VIII. c. 6.* 'No Man shall pay a Mortuary, except he dy'd possess'd of Goods to the value of Ten Marks. 'If he have Ten Marks, but under 30*l.* he shall 'pay but 3*s.* 6*d.* if above 30, and under 40*l.* 'then 6*s.* 8*d.* if above 40*l.* then he shall pay '10*s.* but no where more than hath been accustomed.

If the Parson sues for Tythes from which the Land, or Person he sues are discharged by Law, yet no Action of the Case lies against the Parson for bringing such Suit, if the Suit be commenced in a proper Court, and in due Form of Law. *Watf. c. 47. p. 400.*

L E A S E of TYTHES.

It has been adjudged, than an Ecclesiastical Rector or Vicar may Lease any Portion of Tythes for one Year by Word of Mouth ; but if the Agreement be for more Years than one, then
it

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it is wholly void, even as to the first Year; and so 'tis, if such Contract be made before the Owner have sow'd his Corn: And the Lay-Parson shall not Lease his Tythe for one Year, without Deed. Yet a Contract without Deed, that the Owner shall retain his own Tythes for divers Years, is good. Nay, and 'tis said, a Parson may Lease his Rectory consisting of Glebe, and Tythes by *Parole* for Years; for then the Tythes pass as annex'd to the Rectory. *Watf. c. 42. p. 338.*

By Stat. 29 Car. II. *All Leases not exceeding the Term of three Years, and by which the Rent reserved to the Landlord shall amount to two third Parts of the full improved Value, are excepted out of that Act, whereby Leases by Parole are declared to have the Force and Effect of Estates at Will only.* But such Leases as were void in Law before making this Law, do not seem to be of greater Force than before.

If a Parson shall let his Glebe for so many Years as he shall be Parson of the Church, it shall be void for the Uncertainty, says my Lord Coke; and this is especially true in relation to Tythes: And tho' the Law in this Case does not seem very clear, yet thus much may, I think, be depended upon, that a Contract to retain Tythes for the Parson's Life by *Parole* only, is void. *See Watf. c. 42. p. 337, 338, 339, 340.*

It were much to be wish'd, that where Tythes are compounded for Money, as small Tythes are, for the most part, throughout the Kingdom, the Incumbents had taken care to have their Agreements formally drawn by way of Lease, between themselves and their Parishioners.

oners, and renew'd every three or five Years; for this had been one way to prevent the growth of *Modusses*. For when a certain Sum has for 20 or 30 Years together been paid for a Farm, the Parishioner insists upon it as an Immemorial *Modus*; and tho' perhaps the Vicar may find, by his Predecessor's Accounts, or otherwise, that the Composition was made within the Memory of Man, yet it may be impossible for him to get *Living*, or other *Legal* Evidence for it; and so the Composition grows into a *Modus*. Whereas when Tythes are let by Lease, at the Expiration of the Term, the Vicar may bring his Parishioners to New Articles, or else take Tythe in Kind.

To prevent the growth of these *Modusses*, it were greatly to be wish'd that Incumbents would keep exact Books of all their Receipts of Money in lieu of Tythes, and bequeath them to their Successors, so that it may not be in the Power of their Executors to destroy, or withhold such Books, but that they may be obliged to deliver them so soon as the Dilapidations have been compounded for. All the Twelve Judges have agreed, that Books shall be Evidence for a Man's Successor, tho' not for himself, or his Executors.

O F F E R I N G S.

Not only by Canon Law, but by *Stat. 27 Hen. VIII. c. 20. 2, 3 Edw. VI. c. 13. Offerings* are due from the Parishioners to their Minister; viz. *Where there is a Custom of paying them:* these Offerings are,

I. Oc.

1. Occasional, as upon Churching, Marrying, Burying.

2. Constant and Stated, that which by Custom becomes due at *Easter*, but formerly was paid at four several Festivals in the Year, viz. at the three Great and Solemn Feasts, which we still observe, * and on the Feast of the Church's Dedication, which was commonly called the *Wake* †, or *Feast* of such a *Parish*. “ But after
“ finding that so many Holydays brought no
“ small Detriment to the Commonwealth, it
“ came to pass, that generally these *Wakes*, or
“ *Feasts* of Dedication, were respited till the
“ *Sunday* following, as we now observe them,
says Dr. Heylin, *Hist. Sab.* They are still kept
as Times of *Pleasure* and *Entertainment*, in
some Places on the *Monday* following. But the
Devotion of this Feast is every where laid aside
in *England*; whereas in the *Protestant Church*

* Sometimes Whitsunday is omitted, and All-Saints-Day mentioned as a Day of Offering at other times Christmas, Easter, Midsummer and Michaelmas. See *Act of Convocation in Sparrow's Collection*, p. 167, &c. See *Chapter of Holydays*, p. 150, 151.

† Yet Quære, Whether the Feast of Dedication, or the Church-Holyday were called the Wake The Church-Holyday was the Saint's Day in which the Church was dedicated. The Dedication-Day was the Day on which it was Consecrated. Sir H. S. was not clear in this Point: But seems to think both Days were called Wakes. See his Gloss. v. Wakes.

of Zurich there is a *Prayer* provided for this Day. See *Tig. Liturgy, in English*, 1693.

It has of late been disputed, on what account the *Easter-Offering* becomes due; I take Bishop *Stillingfleet's* Judgment to be the best, viz. *That 'tis a Composition for Personal Tythes due at that Time.* *Eccl. Cases*, p. 252. It is certain, that if this be not a *Personal Tythe*, there is no such Tythe now paid in *England*; except you will reckon Tythe of Mills meerly *Personal*, and except those *Modusses* for Fish caught at Sea, which are paid in some few Places; and *Easter* is the time when all Tythes are to be paid, for the payment of which there is no other time fixt by Law, or special Custom. See *Rubric post Commun.* And even the Canon Law did allow of a Composition, or *Modus* for Personal Tythe, tho' under the real Value. *Bishop Stilling. Eccl. Cas. p. 311. See Rubr. post Com.*

I am inclin'd to be of Bishop *Stillingfleet's* Judgment, when I consider, that what was originally call'd an *Offering* or *Oblation*, in proportion of the Rent of the Houses in the City of *London*, is, and has, time out of mind, been call'd a *Tythe*; and that even by the Acts of Parliament made on this Occasion, viz. 2, 3 *Ed. VI. c. 13.* 37 *Hen. VIII. c. 12.* 22, 23 *Car. II.* 'Tis true, *Lyndwood* earnestly endeavours to prove, that they were *Prædial Tythes*, *L. 3. F. 17. c. Sancta, v. Negotiationem*; and that therefore they ought to pay Offerings besides: But 'tis plain by his Arguing, that both Custom and the Stream of Authority was against him in this particular: and I think that his Arguments are far enough from being unanswerable; especially

cially since he owns that they were called *Offerings*, and were by Law to be made on the several *Sundays* and *Feasts* with *Vigils*, at the Rate of an Halfpeny in the Pound Rent; which came exactly to 2s. 9d. in the Pound, which is the *Proportion* mention'd 37 H. VIII. nor is this call'd *Tyth* of *Houses* by the *Stat. of Edw. VI.* but *Tyth* by *Houses*. And instead of enlarging on this particular, I shall only observe the Absurdity that *Lyndwood* runs upon, out of an honest * *Zeal* for the City-Clergy, viz. That it was a *Prædial Tyth*; which is as much as to say, that *Houses* grow out of the *Earth*; for no other *Tytbes* are *Prædial*, but what are produced out of it. And it should seem by *Sommer*, that the Case of the Churches at *Canterbury* was the same with those at *London*.

If indeed the Ground on which the Houses were built, had formerly been till'd and yielded *Prædial Tyth*, it might be pretended, that this Payment was a *Composition* for the *Prædial Tyth*, formerly arising from those Grounds; but *London* was built long before Christianity was received, and therefore *Prædial Tythes* could never have been due from the Land on which the Houses are built. And who can believe that several hundred Years since, an Agreement should

* I say he did it out of an honest *Zeal* for the City-Clergy: For his design was to prove, that *Personal Tythes* were due to them from their *Parishioners* over and above these usual Payments, which could not be, if these Payments were for *Personal Tythes*, therefore he would have them *Prædial Tythes*.

should be made to pay 20 s. or 40 s. by the Year, for the Tythe of such a Plot of Ground as is sufficient to build a House on, when, if that Land were never so much improved, the whole Product, or Crop, could not have been worth half the Money, as things then were; when a Quarter of Wheat was worth but two or three Shillings.

However, the Opinion of those who take *Easter-Offerings* to be paid for the *Sacrament*, is less tolerable than that of *Lyndwood*: For this is directly contrary to the Intention of many ancient Canons, which called this *Simony*. I am sensible, that the Canonists, with their Fetches, taught the Clergy to evade these Canons, as particularly by telling them, that tho' they might take nothing for Baptism, yet they might *sell the Water before it was Consecrated, to the Parents of the Child*. L. 5. T. 2. c. 1. v. *Baptismus*. And they might with as much Reason say, that tho' Money might not be given for the Eucharist, yet the Host before Consecration might be purchased by him who was to receive it: But Sacraments are to be administered *freely*, and *ex Officio*. It may indeed be pretended, that if a Clergyman go to a private House to administer a Sacrament, he is to be paid for his Journey; which may seem a better Shift, than that of being paid for the Water: But at this rate, he might also demand a Fee for going to visit the Sick, which yet I think *

no

* I am lately assured, that the City Divines are paid for visiting the Sick; and I am astonish'd at it, ——— quid non mortalia pectora cogis, Auri sacra fames? ———

no Clergyman ever pretended to do ; and if he go to baptize a Child likely to live, or to use the *Publick Office of Baptism* in Private, and expect Pay for it, then the Pretence of being paid for his *Journey*, is worse than that of being paid for the *Water* : For then he expects Pay for acting contrary to his Duty, to his Promise of Conformity to the *Rubric* and *Canons* ; for by these he is bound to *Baptize after the last Lesson at Morning-Prayer, or after the last Lesson at Evening-Prayer, excepting in Cases of Necessity.*

Bishop Stilling. observes, that the Priest who uses the Office of *Publick Baptism* in Private, in the *Greek Church*, incurs the Sentence of *Depri- vation* : And gives his Judgment, that *none but the Bishop can dispense in this Case*, p. 208, 209, 210. *Eccl. Cases.*

And if Offerings are a Composition for *Personal Tythes*, as they seem to be, then are they not to be paid by Day-Labourers, 2, 3 *Edw. VI.* when Offerings have been demanded of Servants to the Plough, Prohibition has been granted. *Watf. c. 51. p. 458.*

But, on the other side, if *Easter Offerings* be *Compositions for Personal Tythes*, then *Dissenters* can have no Plea or Excuse for the non-payment of them : For (to omit all other Reasons) they are expressly by the very Words of the *Act of Toleration* declared to be not exempt from paying Tythes.

And yet I dare not say, but 'tis possible the *Easter-Offering* might in some places at first be paid on this Consideration ; that this was the time when all were to receive the Sacrament : For tho' the Canon Law condemns it as gross

Simony

Simony to take or pay Money for Sacraments, or any Sacred Office; yet it allows, that if there be a Custom of paying so much after having receiv'd the Sacraments, the Custom is good, and the Money to be recover'd in the Spiritual Courts. The Words of *Atton* are observable: *If the Priest demand Money for performing the Office, he will be cast: But if he demand it on Consideration, that so much used to be paid on the performing such an Office, he will carry his Cause.* See *Orib. Const. Sacramenta & Gloss.* and *Archbishop Langton's Const. Firmiter*; with *Lyndwood's Gloss.* to the same Effect. And so, they say, the Priest must not demand Money for reading the Office of Burial, or breaking up the Ground, for either of these are with the Canonists direct Simony: But on Account that so much has of Custom been paid, and therefore they are very severe on those Clergymen who refuse to perform any Religious Office, without having the Money first paid: This, on all Occasions, they declare to be Simony.

It must be confessed, that if this Notion be admitted, that *Offerings are due upon account of receiving the Sacrament*, then the *Dissenter* has a Pretence for not paying them. For he must say, *That if he be not obliged to receive the Sacrament of the Legal Incumbent, then he cannot be obliged to pay any Duty to him on that Account*: I think it might as fairly be argued, that since he is not obliged to attend any Ministrations of the Legal Incumbent, that therefore he is not bound to pay him any Church Dues: But it will be answer'd, The Act of Toleration obviates this Argument, by binding him

him to pay his *Tythes*, notwithstanding this Toleration: nor only *Tythes*, but all other Dues; for so says the Statute, *viz. Nothing herein contained shall exempt any Persons from paying Tythes, or any other Duties to the Church or Minister*: Therefore not from Offerings due upon Churching Women; for if those only who are actually Church'd must pay, then the Church is a Loser, by Womens being left to their Discretion in this particular, as before they were not.

Justices of Peace that love the Church and Clergy, have great Opportunity given them of doing them right, by *Stat. 7, 8 W. III. c. 6.* being an *Act for the more easy Recovery of small Tythes*: (which is perpetuated by an Act of Her late Majesty.) Tho' *Tythe* only is mention'd in the Title, yet in the Body of the Act, *Oblations, Offerings, &c.* are provided for. An admirable Law, if well executed. See *Appendix Numb. 9.*

The like Remedy is to be used against *Quakers*, for any sort of Church Duties not exceeding 10*l.* and for any Term of Years past, but this last is a *Temporary Act*, to continue eleven Years from the making of it, which was, 13 *W. III.* This is made perpetual by 1 *G. c. 8.*

'Tis not necessary that the Incumbent do demand his *Tythes* or Satisfaction for them before he commence his Suit, except he proceed before the Justices of Peace. I have indeed heard, that the last *D. of the Arches and Vicar-General*, would not permit process for *Tythes* till a Demand was first made; but in this, I suppose, his Judgment was singular. However, 'tis certain,

such

Such Demand is not necessary for him that sues in the *Exchequer*.

The Clergy of *London* can sue only before the Lord Mayor for their Tythes, &c. but if the Lord Mayor neglect, or refuse to do his Office, the Lord Chancellor, or Barons of the *Exchequer* are to interpose ; 12, 23 *Car. II.*

C H A P. XXV.

Of the separate Rights of Parson and Vicar.

DE *Jure Communi*, all the Tythes and Profits of the Church belong to the Parson ; what the Vicar claims, must be either by *Endowment* or *Prescription*.

The *Endowment* is the Original Agreement betwixt the *Monastery*, or other *Religious Body* to which the Church of old belong'd, and the *Vicar* ; made by Consent or Appointment of the *Bishop*, and sometimes called *the Ordination of the Vicarage*. If that Religious Body be now in being, as all the old Cathedrals are ; or if the Impropriation were, at the Dissolution of the *Monastery*, given to any Cathedral or Collegiate Church that now is, the most probable Place to find the Endowment of it, is in the *Archives* of that Church ; if not, you may consult the *Augmentation Office*. But most Endowments are now lost, at least to us, by being carried to *Rome* at the Dissolution of *Monasteries*.

And therefore if a Vicar cannot produce an Endowment, yet if he prove constant Usage, and Payments, that is sufficient. *Watf. c. 39. p. 304, 305.*

And if the Endowment do appear, and do not mention any Glebe, or Tythe belonging to the Vicar, yet if the Vicar by constant Usage hath enjoy'd them, he shall not be concluded by their not being mention'd in the Endowment: For it shall be presum'd, that some Composition has been since made, or that the Bishop, by his Power, has since augmented the Vicarage. *Watf. Ibid. p. 305.*

The Distinction of great and small Tythes, does no great Service in determining the Rights of Parson and Vicar: For the Vicar, in most Places, has some great Tythes, as Hay, or Wood, and (perhaps) some Portion of Corn-Tythes; and on the other side, the Parson often has some of those Reputed small Tythes; as Hops, Flax, and in some parts of the Parish, and sometimes thro' the whole Parish, all manner of Tythes: Only, if the Parson cannot prove that he, and his Predecessors have, time out of mind, receiv'd any small Tythes, or the Tythe which is in dispute, it shall, if it be a small Tythe, be presumed to be the Vicar's: Or, if it do appear, that the Vicar be Endow'd with all small Tythes, then the Parson can have no other Tythes but those of Corn, Hay, and Wood: For I do not find, that any others are by any Law reckon'd great Tythes.

Watson indeed says, that Hops in *Kent*, have ever been adjudged great Tythes, when planted in a large Quantity of Land; but he argues

gues against the Justice of the thing; and to prove, that the Quantity alters not the Property, shews that a Field of forty Acres of *Saffron*, has been adjudged small Tythe, *Ibid.* 306. And I am farther assured, that Hops in *Kent*, have been adjudged small Tythes by the Barons of the *Exchequer*, whose Decree was likewise affirmed by the *House of Lords*, 2do Annæ.

And if small Tythes be, by the Endowment, granted to the Vicar, and the Parson doth by Custom or Prescription take the same, yet the Vicar may recover his small Tythes at Common Law. For 'tis a settled Rule, that *the Parson cannot prescribe against the Endowment*: *Ibid.* p. 307.

Altaragium, a Word frequently used in Endowments, imports not only what is now call'd Offerings, but sometimes all small Tythes commonly paid to the Vicar: *Watf. c. 39. p. 307.*

The Tythes of Clover-grass, or such like, shall go to him that hath Tythes of Hay: *Ib. p. 307.*

Woad, Saffron, Wield, are all small Tythes, and go to the Vicar, if he, by Endowment, or Prescription, have all the small Tythes: *Watf. Ibid.* 306.

If only small Tythes be mention'd in the Endowment or Composition, and yet the Vicar have time out of Mind, had Tythe-Wood, it shall continue to the Vicar, tho' Wood be commonly accounted a great Tythe: *Watf. c. 39. p. 305.*

If a Vicar have used, time out of Mind, to have all Tythes, except Tythe of Corn, and afterwards Rape-seed is sown in the same Parish, he shall have Tythe of that too: *Watf. Ibid.* 306.

No Tythe of Glebe-Land shall be paid of common Right by the Parson to the Vicar, or by the Vicar to the Parson; for *Ecclesia non solvit Ecclesiae*, (but then it must be ancient Glebe,) *Wats. c. 47. p. 404.* and yet by special Custom it may be otherwise, and Tythe may be paid by either to the other: See *Godol. c. 33. G.* And if the Vicar let out his Glebe, it shall pay great Tythe to the Parson, and if the Parson let out his Glebe, it shall pay Vicarage Tythes to the Vicar. *Ibid.*

By this last Case, it should appear, that the Glebe of those impropriated Parsonages, the Fee of which is in any Ecclesiastical Person, or Body, ought to pay Tythe to the Vicar, when leased out, as all or most such Parsonages are.

When there is a Controversy between the Parson and Vicar, the most proper Court is the *Spiritual*; and in this Case, 'tis allow'd, on all hands, that no *Prohibition* lies; and sometimes there are *Terriers* in the Ecclesiastical Court, which are Accounts of the Glebe, and Tythes given in to those Courts of old time by the Church-Wardens and other Parishioners, and these Accounts are often very just as to the Vicar's Rights and may do him good Service, and are of greater Authority in these Courts, than in the Temporal ones, where Courts Ecclesiastical are not allow'd to be Courts of *Record*; and yet even in Temporal Courts these *Terriers* are of some Weight when duly attested by the Register: But the Misfortune is, that when a Clergyman has carried his Cause in the Bishop's Court, he is liable to be appeal'd to the *Arches*, &c. or the Parson may again begin his Suit against the Vicar *de novo*, in the Temporal Court: Yet La

Parsons have, of late Years, found no great Encouragement to sue their Vicars: For even a Jury has been often found to favour the Vicar, rather than the Parson.

In some Places where the Parson repairs the Chancel, the Vicar, by Prescription, claims a Right of a Seat for his Family, and of giving leave to Bury there, and a Fee upon the Burial of any Corps.

As to the Right of a Seat in the Chancel, it was originally inherent in every Vicar. For before the Reformation the Hours of the *Breviary* were to be sung or said *in the Chancel, not in the Body of the Church*, by the express Words of the Constitution of Archbishop *Winchelsey*, entituled, *Presbyteri. Lyndw. Oxf. Edit. p. 237.* and this was to be done, not only on *Sundays and Festivals, but on other Days*, by another Constitution of the said Archbishop, entituled also, *Presbyteri. Lyndw. p. 69.* and these Hours were to be sung or rehearsed, not by the Vicar alone, but with Confort and Assistance of all the Clergymen belonging to the Church, who were sworn to attend him on these Occasions. See *Spelman's Councils, Vol. II. p. 707.* which were the Ecclesiastical Family of the Vicar: So that 'tis evident, that all Vicars had a Right of sitting there before the Reformation, and, by consequence, must retain this Right still, unless it do appear that they have quitted it: and if they have not, for forty Years past, used the Right, this breeds a Prescription against them in the Ecclesiastical Courts. In many Chancels you may see the ancient Seats or Stalls used by the Vicar and his Brethren in perform-

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ing these Religious Offices, like those which remain in the old Choirs of Cathedral and Collegiate Churches; and from hence it is, that *Cancellus* and *Chorus* are Words of the same Signification. This being the Place where the Body of the Clergy of every Church sung, or at least rehearsed their Breviary: And if any common Parishioner may prescribe to a Pew in the Chancel, (See *Chap. XVIII.*) much more the Vicar.

As these Seats were placed at the lower end of the Choir or Chancel, for the daily use of the Vicar; so at the upper end stood the High-Altar of every Church, where, as the Vicar or his Representative was oblig'd to celebrate Mass every Sunday and Holyday of Obligation; so he might do it every Day, if there were Occasion, or if he pleased: So that it is clear, the Use of the Chancel was entirely in the Vicar, whoever repair'd it, and therefore no wonder if the Pavement were not to be broke up without his leave; and that thereupon he should acquire a Right of receiving what Fees were due on such Occasions. And the Reformation left the Rights of Parson and Vicar as it found them.

'Tis therefore a very groundless Notion with Impropiators, that they have the same Right in the great Chancel, that a Nobleman has in a lesser: These lesser Chancels are supposed, by Lawyers, to have been erected for the sole use of those Noble Persons; whereas 'tis clear the great Chancels were originally for the Use of Clergy and People; but especially for the Celebration of the Eucharist, and other publick Offices of Religion, there to be performed by the Curate and his Assistants. That the Patrons repair the

great

great Chancels, does not at all prove their sole Right to them; for they were bound originally to repair the Church as well as Chancel; and of common Right the Repairs of the Church are still in the Parson: 'tis Custom only eases them of this Burden; which Custom is easily to be prov'd, in all Parishes that I know. The Ordinary has no Power to order Morning or Evening Prayer to be said in Noblemens Chancels; but he can order them to be said in the great Chancel. See *Rubric before Morning Prayer*.

Yet the Reverend Dr. *Turner*, Vicar of *Greenwich*, in the Diocese of *Rocheſter*, has, at the Suit of the Impropriator, and by Verdict at the Aſſizes, been forced to quit his Claim of giving leave to bury in the Chancel, and receiving Fees for it: and rather than be at the expence of another Suit, has likewise receded from his Right of a Seat in the Chancel.

Leſt any Vicar ſhould, from the ill Succeſs and Treatment, which the Doctor met with, conclude that theſe Rights are not Deſenſible, let me obſerve to the Reader, that it does not appear, that it was ever ſo much as queſtion'd, by the Council of one ſide or the other, but that ſuch a Claim might be maintain'd, if the Preſcription were well proved: and the Point to be determin'd, was not, whether a Vicar might preſcribe to give leave to bury, and receive the accuſtom'd Fees for burying in the Chancel; (this ſeem'd to be granted on both ſides) but whether the Reverend Dr. *Turner* had prov'd his Preſcription, as Vicar of *Greenwich*, to give leave to bury in the Chancel there; or rather, whether the Evidence produc'd by the Impropriator,

Priator, such as it was, did not disprove and overthrow the Vicars surmise of a Prescription. This is the true state of that Case, according to that Account, which at my request, the Doctor was pleas'd to oblige me with.

C H A P. XXVI.

Of Ecclesiastical Courts, and their Jurisdiction.

BEFORE the Conquest, the Ecclesiastical and Temporal Court was the same, the Bishop of every Diocese sitting in Judicature, together with the Alderman or Sheriff; and as one determin'd all Matters meerly *Secular*, so did the other all that concern'd the Church and Religion; and if the Cause were mixt, they both perform'd their part, and gave their mutual Assistance: Tho' the Bishops still held their Synods and Visitations, and there exercised the more important Parts of Discipline.

But *William I.* separated the two Jurisdictions, after which says *Somner, Ant. of Cant. Chap. of Eccl. Govern.* 'As I find, by searching
'and turning over ancient Monuments, Ecclesi-
'astical Jurisdiction was exercised chiefly, and
'for the most part, for Clergymens Causes, espe-
'cially in *Synods* and *Chapters*, the Bishop using
'in Person to preside over the one, as the Arch-
'deacon over the other.

Papists

Popish CANON-LAW.

In the middle of the 12th Century, and Reign of King *Stephen*, part of the *Popish Canon-Law*, call'd *Decretals*, was publish'd and put in practice here; and when these had in some sort been admitted, within 80 Years after came over the *Decretals*, and in 70 Years after that more *Decretals* still, with the *Clementines* and *Extravagants*, all which together make the *Corpus Juris Canonici*. When the Church-Law grew thus Voluminous, there was little Occasion to make any new Canons at home: the main Business of our National and Provincial Synods now, was to reinforce the Execution of the *Pope's Canon-Law*, in such Particulars as the Ruling Part of the Church thought proper. The Provincials of *Lyndwood* consist of such *Constitutions* drawn out of the Body of the *Canon-Law*, with such Variations as were proper to adapt it to the Circumstances and Constitution of the Church of *England* in those Ages, by 14 successive Archbishops of *Canterbury*, sitting in their *Provincial Synods*, the first whereof was *Stephen Langton*, who came to the See *A. D.* 1206; the last *Henry Chicheley*, who died *A. D.* 1443. *Lyndwood* digested all these Constitutions according to the Method of the *Canon-Law*, whereby is shewn, what part of the *Canon-Law* hath any Force here, says Bp. *Stillingfleet*, *Eccl. Cases*, p. 371; and tho' these *Constitutions* were drawn up for the Use of the Province of *Canterbury*, yet they have been expressly receiv'd by that of *York* in a Convocation held there, *A. D.* 1463.

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To these we may add the Constitutions made by Cardinal *Otho* in a *National Synod* held there, *A. D.* 1236; and those of Cardinal *Othobon* made likewise in a *National Synod*, *A. D.* 1268, both being *Legates a latere* from the Pope: *John Atton*, or *Acton*, glossed on these 29 Constitutions of *Otho*, and 54 of *Othobon*, as *Lyndwood* afterwards did on the Provincials.

Canonists and Ecclesiastical Judges.

As the Church-Law grew various and bulky, 'twas found necessary to have a Set of Men, who should make it their Study and Business. Divines must often find themselves at a loss, when they had such a multiplicity of Laws drawn up in a *Forensick* Stile, and daily growing harder and harder, by reason of the variety of Glosses made upon it, especially when Disputes in the Bishop's Court began to be numerous, spun out into great Lengths, and perplex'd with many Difficulties: Therefore about the 13th Century, Bishops every where chose some of those Lawyers to be their Officiates, that is, to hear Causes, but not to meddle with Matters of Jurisdiction. Afterwards, Bishops being often in Foreign Parts, on the King, or Church's Business, delegated to these their Officials all Parts of their Jurisdiction; saving that they reserved to themselves Institution, and some such like Particulars, whenever they thought fit to exercise them: Sometimes the Jurisdiction was delegated to one, hearing Causes to another; but both the Official, and he who had the Jurisdiction, were always in Holy Orders, till *Henry* the Eighth's

Eighth's Time. He who has this double Commission of the Bishop, is commonly stiled his *Chancellor*. He who is substituted by the Archdeacon is called his *Official*. And he who is substituted by the Bishop for any particular sort of Causes, or in any remote Part of his Jurisdiction, is called a *Commissary*; and all these are called *Judges Ecclesiastical*, or *Ordinaries*; (tho' this last Title does in a more eminent Sense belong to the Bishop or Archdeacon, whom they represent), and these have now the Exercise of all Church Power, only the Bishop generally reserves to himself the Power of *Institution* to be used, or not used at his own, or his Successor's Discretion, and the passing the Sentence of *Excommunicatio major*, and Deprivation, or Deposition of an Irregular Clergyman, is by Canon reserved to the Bishop, if he be by Process, or Proof of any Crime thought worthy of that Sentence, not if he be by Statute declar'd *ipso facto* depriv'd, or by Canon *de jure*, for any Fact that is evident, and wants no Proof; nor can any of these Lay-Judges grant any *License* or *Dispensation*, without the *Fiat* of the Bishop, except for *Marriage without Banns published*, and perhaps for *eating Flesh on Fish Days*; and as these last may likewise be granted by any Curate, as has been shewed *Chap. XX.* so the former for *Marriage* are often granted by meer *Surrogates*, in remote Parts of the Diocese, in a very *uncanonical* manner.

Some think it a very gross Corruption that Laymen (for our *Ecclesiastical Judges* generally are not in Orders, since *Stat. 37 Hen. VIII. c. 17.*) should be permitted to exercise a Spiritual Authority.

thority ; but I can see no greater Necessity, that he who acts as a Spiritual Judge should be a Bishop, or Clergyman, than that he who acts as a Temporal Judge should himself be a King. It is sufficient that he acts in the Name of the Bishop, and by Laws *Spiritual* ; tho' I confess it were much more agreeable to Primitive Discipline, that they were Priests.

It is indeed greatly to be lamented, that the 11th Canon of those made A. D. 1640. is not in force, whereby it was provided, *That in all Patents given to Chancellors and Officials, Bishops and Archdeacons should reserve to themselves a Power of sitting alone, or together with them, when they think fit to hear Causes* : For want of which Reservation we are told, that these *Representatives* have sometimes refused to admit their *Principals* in whose Names they acted, to sit on the Bench with them, or concern themselves in the Business depending, and so *Shadows* has jostled the *Body* out of the Chair.

In the Statute of 37 H. VIII. *Doctors in Law, married or unmarried*, are the only Persons mention'd as capable of performing the Office of *Chancellor, Advocate, or even Register* in these Courts ; yet it has been adjudg'd, that any other Layman, skill'd in the Ecclesiastical Laws, may perform these Offices ; for it is not said, *Doctors of Law ONLY* ; yet no *Advocates* are, I think, admitted to plead Causes, but *Doctors of Law only* ; and the Canon has so far restrained the Office of an Ecclesiastical Judge, that none can execute it, that is *under the Degree of Master, or Batchelor of Art.* See *Can. 127.* And the Temporal Courts have declar'd that

that they cannot try the Ability of an Ecclesiastical Judge ; but only his Right to his Place, or any thing that concerns the Profits of it. See *Godol. c. 10. sect. 19, 20, 21.*

It has likewise been adjudg'd, that these Places of *Common Right* are grantable only during the Life of the Bishop, or other Prelate, who has the Gift of them, and that for a very good Reason, viz. "That if such Grant should bind the Successor, then the Successor cannot remove him, and yet the Successor shall answer for his Acts and Offences, which is too hard ; and yet such Grant is good, if there be a Prescription." *Watf. c. 42. p. 351, 352.* And, alas ! 'tis but too evident that in most Dioceses this Office is, or may be granted, not only during the Life of the Granter and Grantee, but to another in reversion.

Ecclesiastical Jurisdiction.

The Jurisdiction of all Ordinaries, that is, Bishops and Archdeacons, of Chancellors and Officials under them, is either, 1. *Voluntary*, which consists in visiting the Churches, Clergy, and Church-Wardens, in their several Districts, granting Institution, Sequestration, Licenses, &c. or, 2. *Judicial* or *Contentious*, which consists in Probat of Wills, granting Letters of Administration, hearing and determining all Causes which belong to their Cognizance.

Both these Jurisdictions belong to every *Ordinary*, to some in a greater measure, and to others in a less, in a due Subordination. And,

A R C H.

ARCHDEACON'S-COURT.

1. The Archdeacon's Court and Power is the most inferior ; to him is the Authority granted of annually visiting the Clergy within his District, and correcting and censuring them, but he cannot proceed beyond a Suspension : He commonly has the Probat of Wills, and Power of Administration, either concurrently with the Bishop, so that the Party is at liberty to apply to either his Court, or the Bishop's, or else exclusively, in which Case the Wills of all Persons dying within his Jurisdiction are to be proved only in his Court, except the Defunct be a Bishop or left Goods or Debts to the value of 5*l.* or upward in another Diocese, or ten Pounds, if the Defunct died in *London*, in which Cases the Will must be proved, or Administration taken in the Archbishop's *Prerogative Court*. He has the Custody and Sequestration of all vacant Benefices, and the Induction of new Incumbents, and a right of hearing all Ecclesiastical Causes, and determining them, if commenced by Persons within his Archdeaconry ; excepting *Matrimonial Causes* ; and some Archdeacons may, by special Custom, decide Matrimonial Causes, and even grant Institutions, but never, I think, grant Licenses of any sort ; all their Jurisdiction is exercised by an *Official*.

BISHOP'S-COURT.

2. The Bishop has all the Authority in his whole Diocese, which the Archdeacon has in his

his part of it ; only that he visits but once in three Years ; has of common Right the Power of *Institution*, and *dispensing* in common Cases, Hearing and Determining all manner of Causes Ecclesiastical ; and to this Court there lies an Appeal from the Archdeacon's. His *voluntary* Power he used to exercise by his *Vicar-General*, his *Contentious* by an *Official* ; but of late the *Chancellor* supplies both Places, in most, if not all Dioceses.

To the Bishop's Court formerly belonged a Prison for the securing criminal Clergymen, and Heretical Laymen, by *Stat. 2. H. IV. c. 15.* By *Stat. 1 H. VII. c. 4.* Incontinent Clergymen were to be Imprison'd at the Discretion of the Bishop. And this last Act is yet in force.

From the Diocesan Court, or Bishop's *Consistory* (so it is commonly stiled) the aggrieved Party may, in 15 Days after Sentence pass'd, appeal to

Metropolitan or ARCHBISHOP'S COURT.

3. The Archbishop, Primate or Metropolitan's *voluntary* Jurisdiction consists in visiting, not only the Districts of his own Archdeacons and Commissaries, but every Diocese within his Province ; in exercising the Power of Ordinary within every such Diocese, during the Vacancy of the See, and during six Months upon every Visitation (for which time both the Bishops and Archdeacons Courts are inhibited) ; in confirming the new Bishop, and appointing *Coadjutors* to those who by reason of Infirmary stand in need of them ; granting *Institution*, &c. All this is, or may be perform'd by his *Vicar-General*.

COURTS

COURTS of FACULTIES.

One Branch of the *voluntary* Jurisdiction of the Archbishop of *Canterbury*, viz. his Power of granting *Dispensations* for Plurality of Benefices, Letters Dimissory, or to be Ordained *infra etatem*, and all Dispensations in extraordinary Cases, is performed by the *Master of the Faculties*, who issues out such Letters, &c. on sight of the Archbishop's *Fiat* under Hand first obtained; and in his Court are register'd the Certificates of all Bishops and Noblemen, granted to their Chaplains, to qualify them for Plurality or Nonresidence.

OFFICIAL of the ARCHES.

The *judicial or contentious* Jurisdiction of the Metropolitan, consists in hearing and determining all manner of Causes that come into his Courts by Appeal, or otherwise, and this is executed by the *Principal Official* or *Official of the Arches*, as he has been for many Ages stiled, because of old he kept his Court in *Bow Church*, called in Latin, *Ecclesiæ sanctæ Mariæ de Arcubus*.

PREROGATIVE COURT.

But one part of the Archbishop of *Canterbury's* Judicial Power is performed by the Judge of his *Prerogative Court*. I mean, proving Wills and granting Administration for all Bishops who die within his Province, and such others who die

die in any part of his Province, having *Bona Notabilia* in any Diocese beside that they die in; only *Money becoming due for Work in any of his Majesty's Docks is not to be reckon'd Bona Notabilia, so as to found the Jurisdiction of this Court by Stat. 4, 5 Annæ.* This Court hath its proper Judge.

A U D I E N C E.

Farther, the Archbishop of *Canterbury* had formerly his Court of *Audience*, in which, at first, were dispatch'd all such Matters, whether *Voluntary* or *Contentious*, as the Archbishop thought fit to reserve for his own Hearing. They who prepared Evidence, and other Materials to lay before the Archbishop, in order to his Decision, were called *Auditors*; afterwards this Court was removed from the Archbishop's Palace, and the Jurisdiction of it was exercised by the *Master* or *Official of the Audience*, who held his Court in the *Consistory Place* at *St. Paul's*: but these three great Offices are, and have for a long time past been united in one Person, who keeps his Court as *Vicar-General, Official of the Arches, and the Audience in Doctors-Commons-Hall*; where also the Judge of the *Prerogative* now keeps his Court.

The Archbishop of *York* has likewise his *Prerogative Court* and Court of *Audience*.

In what Cases the Archbishop's Court may cite Persons out of their Diocese.

These Metropolitane Courts have formerly pretended to a sort of concurrent Power with the Ordinary of every Diocese, and so cited Persons at Discretion to appear before them from any Part of the Province: but by the 23 Hen. VIII. c. 9. their Authority in this respect is restrained, so that now they can cite Persons out of their own Diocese, only in the following Cases, *viz.*

‘ If any Spiritual Offence be committed by the Bishop, or other Inferior Ordinary.

‘ If any Party think himself aggrieved by a Sentence pass’d in any Inferior Ecclesiastical Court, and appeal to the Metropolitan Court.

‘ In case the Inferior Ordinary dares not, or will not convene the offending Party.

‘ If the Inferior Ordinary be Party in a Suit.

‘ If Letters of *Instance* or *Request* be sent by the Inferior Ordinary to the Judge of these Courts, that he would take any Cause to his Examination and Cognizance, tho’ arising in the Jurisdiction of the Inferior Ordinary.

‘ In any of these Cases, the Judge of Arches &c. may summon Parties, or Witnesses out of their own Diocese, by the Statute above mention’d.

‘ The Judge of the Prerogative for the proof of Wills, and determining any Suit thereupon commenced, may summon Persons from any part of the Province; and so may the Archbishop in case of *Heresy*, by the Words of the

‘ same

same Act.' And here it may be observed, that as all Ordinaries might, and may still *convene* Hereticks, *pro Salute Animæ*, so of old none could convict them, so as to deliver them into Secular Hands, in order to have them burnt, till afterwards, by *Stat. 2 Hen. IV. c. 15.* every Bishop might do it in his own Diocese. See *Godol. c. 40.* but by *Stat. 29 Car. II. c. 9.* this, and all other Sanguinary Laws for Religion are repealed.

Farther, in the Vacancy of any See the *Vicar-General* and *Official of the Arches*, who is (as has been said) the same Person, may cite any one out of that Diocese to appear in his Court; for during that time he is their Ordinary under the Archbishop.

D E L E G A T E S.

From the Metropolitcal Courts formerly the Appeal lay to the *Pope* only, now to the King in *Chancery*, who, under the Broad-Seal, constitutes a Commission of *Delegates*: of which see *Chap. V.*

E X E M P T S.

There are several Places which were formerly, by the Favour of the *Pope*, privileg'd from all Visitation and Authority but his own, only on the account of some Religious, that is, *Monks*, *Friars*, or other Regulars, who had their Houses there; and some had the same Privilege granted them from the Crown. Many of these Places retain their ancient Immunities, and so are not liable

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liable to be visited by any but the King, and from any such Exempt Judge, or Court, the Appeal lies immediately to the King, that is, the Court of *Delegates*. See *Chap. V.*

The Jurisdiction of the Deanry of St. *Brian's* in *Cornwall* is very singular: Formerly it was subject to the *Pope* only, but seized into the Kings's Hands by one of the *Edwards*: The Bishop of *Exeter* now holds it in *Commendam* of the Crown, and all Spiritual Jurisdiction is by this means, lodged in the Bishop so entirely, that there lies no Appeal from him, but to the Crown directly. *Additions to Cambd. in Cornwall, p. 20.* I heartily wish that all Exempt Places were in this manner by *Commendam* put under the Jurisdiction of the Diocesan, or Metropolitan.

D E A N of A R C H E S.

Some Churches are exempt from the Jurisdiction of the *Bishop* and *Archdeacon*, and subject to the *Metropolitan* or *Archbishop* only: the most noted of this sort are the thirteen Parishes within *London*, whereof *St. Mary le Bon* is chief, and from whence the Judge of that Court under the Archbishop, and his *Official of the Arches*, was of old stiled the *Dean of the Arches*; for they are mistaken, who confound these two Offices. The *Dean of the Arches*, as such, had his Jurisdiction bounded within those 13 Parishes; but then as *Surrogate* to the *Official*, who was very often absent from the Affairs of the Archbishop, he exercised all the Jurisdiction throughout the Province, which the *Official*

al cou'd have perform'd, if present. Now indeed this Office is consolidated with the other, and which is very singular, the *Vicar-General* and *Principal Official of the Arches*, is oftner call'd *Dean of the Arches*, than by either of the other Titles.

And the same Person is likewise *Judge of the Peculiars*, that is, of all those Parishes, 57 in Number, which, tho' lying in other Dioceses, yet are no ways subject to the Bishop, or Archdeacon, but to the Archbishop.

Others are *exempt* from the Archdeacon only, and so not liable to be visited, or have Procurations demanded by him, but by the Bishop only, in his *Triennial Visitation*.

*Restraint of ECCLESIASTICAL LAW
and COURTS.*

The Popish *Canon Law* was, in many particulars, very hard upon Princes, and the Laity, and extreamly favourable to the Clergy; and therefore, tho', as has been said, it was in some sort admitted here, during the troubled and feeble Reign of King *Stephen*, yet King *Henry II.* being a Prince of a higher Spirit, could not bear it, but always insisted to have the *Constitutions* of his Grandfather *Henry I.* observed; which were against *Appeals to Rome*, and the *Exemption of the Clergy from Temporal Judicatures*, and *Spiritual Censure for breach of Oath*, and to oblige *Bishops and Abbots to receive Investiture from the King*, by delivering to them the *Ring and Pastoral-Staff*; and an *Exemption of those who held Estates in capite of the Crown*,
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from *Excommunication* by the Ordinary, without *Royal License* first obtained. 'Twas chiefly in opposition to these Demands of the King, that Archbishop *Becket* shew'd so much stiffness; and tho' he lost his Life in the Quarrel, yet, as to the Particulars abovemention'd, he, as to the main, gain'd his Cause for the present.

P R O H I B I T I O N S.

Yet, after all, the *English* Kings and Parliaments could never be brought wholly to receive the *Canon-Law*; and if the Ecclesiastical Ordinaries, under colour of it, proceeded contrary to the known Customs and Laws of *England*, the aggrieved Party used to apply himself to the King in his *Temporal Courts*, and procure a *Prohibition* against the Proceedings of the Ecclesiastical Judge; and even when *Convocations* were called by the Archbishop, some of the *Temporal Judges*, or other *Officers of State*, were commonly sent by the King, to *inhibit* them, in his Name, from entring on any Consultations, or making any Canons contrary to the Laws of *England*, and the *Prerogative Royal*; and yet the *Pope* was in this Age too strong to be absolutely defied; therefore the State came to a temper, and compounded the Matter. The two most remarkable Statutes, whereby this Dispute was adjusted, are those called *Circumspecte Agatis*, made 13 of *Edw. I. A. D. 1285. Articuli Cleri* made 9 *Edw. II. A. D. 1316.* both within a few Years after the Body of the *Pope's Canon-Law* was compleated. Here follows an Abstract of them both, by which the Reader will perceive, that

that Archbishop *Becket* did not altogether lose his End in dying a Martyr for the *Pope* and his Law ; and yet that the Sovereign Authority of the Nation had some regard to the Honour and Dignity of the Crown, and the Ease and Interest of the Subject.

By *Circumspecte agatis*, 'No *Prohibition* shall be granted for Penance corporal, or *pecuniary*, enjoin'd for deadly Sin, as Fornication, Adultery, &c.

'Nor for Process against them who do not repair (*pro Ecclesia non facta*, in the *Latin*) nor adorn their Church, or fence their Church-yard, in which case, says the Statute, no Penance can be enjoin'd but *pecuniary*.

'Nor if Suit be concerning Tythes between two Incumbents, unless the fourth Part of one Benefice be in Dispute, for then the Patron's Right is concern'd, and this always has been reputed a Temporal Cause.

'Nor if Mortuaries be demanded, where they are used to be paid.

'Nor if a Prelate, or Patron sue the Clerk for a Pension due.

'Nor if a Suit be for laying violent Hands on a Clerk ; (but there is a Reserve that the Temporal Court may proceed against such a Person too.)

'Nor in case of Defamation, if Money be not demanded.

'Nor if Process be for breach of Oath.

And *Redemption of Penance with Money* is in all Cases allow'd ; this is called *Commutation*.

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By *Articuli Cleri*, 'No *Prohibition* for Tythes
' or Church Dues, except the Clerk sue in the
' Ecclesiastical Court for the Money for which
' he sells his Tythe Corn, after it had been im-
' barn'd, or except the fourth part of the Bene-
' fice be in question, as before.

' Nor, if any Penance but * *pecuniary* be
' imposed for Sin.

' Nor, if Suit be for striking a Clerk, as be-
' fore, or for Defamation, or Tythe of a New
' Mill.

Nor, if the King's Tenants be excommuni-
' cated, with a *Salve* for the Royal Liberty.

' Nor, if Process be against Clergymen in
' the King's Service, if they be not in actual
' Attendance.

But there is an exprefs Reserve, that *Penance*
in the Ecclesiastical Court shall not privilege
the Offender from being prosecuted too in the
Temporal Courts.

The other Articles are, ' against distressing
' the Cattle of Clergymen on the ancient Land
' of the Church, or in the Highway ; for the
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* *Pecuniary Penance for Sin is exprefly allow'd by Circ. agatis, but disallow'd by Art. Cleri, but Commutation allow'd by both. Pecuniary Penances for not repairing the Church, &c. are not only allow'd by Circ. agatis ; but 'tis said exprefly, that no other Penance can be enjoined. Art. Cleri, tho' they forbid pecuniary Penances for Sin, yet not for neglecting to repair Churches. Quære, Whether Pecuniary Penances inflicted on a Church-warden, or Parson for not repairing the Church, be illegal*

Security of Sanctuaries, and the Ease of Religious Houses, that the Writ *de Excommunicato*, shall issue against the King's Tenants; that the King's Clerks be examined, and instituted by Ordinaries only; that Elections to Vacant Dignities be free; and for the Exemption of criminal Clergymen from secular Judicatures.

By *Stat. 1 Edw. III. c. 2, 11.* 'Prohibition lies against those who sue their Indictors in the Ecclesiastical Court.

By *Stat. 18 Ed. III.* 'no Prohibition lies, in Cases where the King hath no Conusance.

By *Stat. 45 Edw. III. c. 3.* Prohibition lies, if Suit be for Tythes of great Wood above 30 Years Growth. And besides these, there are several other Cases in which by Inferences or Immuendo's from these Statutes, Prohibitions are granted, viz.

If the Sense or Meaning of a Statute be in dispute.

If Suit be concerning the Bounds of a Parish.

If Suit be concerning a Custom, or Prescripti-
on, unless both Parties be agreed what the Custom is, and the Controversy only be whether what is due by Custom have been paid.

If Suit be for Thythe of Things not tythable of Common Right, as Tin, Coal, &c.

If Suit be for any thing properly triable at Common Law, as Lease, Title of a Benefice after Induction.

If a Clerk sue one for striking him in the Ecclesiastical Court, when there was a just Occasion, as when he first struck another. *Godol. c. 2. sect. 20.*

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If the Ecclesiastical Court will not permit the Plaintiff's Title to be travers'd, as whether Incumbent or not.

If Church-Wardens sue for payment of a Sels made without first calling the Parishioners to Vestry.

If the Ecclesiastical Judge will not allow of Proof by one Witness, except in Matters purely of their own Conscience, as Probat of Wills, Heresy, &c.

If a Curate sue in the Ecclesiastical Court for *Burial Fees*, when the Corps was buried in another Parish. *Godol. c. 17. sect. 5.* Yet Bishop *Gibson* asserts such a Fee to be due. *Code 542.*

If a Midwife be sued for not taking a License. *Godol. c. 11. s. 36.*

If one sue a Man for calling him *Knave*, *Drunk-Fellow*, or for saying he *keeps a Bawdy-House*, tho' it be *Defamation*, yet if it appear that he can have Damage in an Action at Common-Law against the Offender, a *Prohibition* shall be granted : *quod mirum.*

B A S T A R D Y.

If the Ecclesiastical Court undertake the Examination of *Bastardy* or *Legitimation*, without the Direction of the *Temporal Court*, a *Prohibition* lies; for this affects the *Temporal Inheritance* of the Subject, and farther the Canon and Common-Law differ in this Point; for if a Man have first a Child by a Woman, and afterward marry her, or if two Persons too nearly related be married, and after having had one or more Children, be divorced upon account of Confor-

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guinity, in both these Cases the Issue is a *Bastard* at Common-Law, but a *Mulier* at Canon Law; and, on the other side, if a Man marry a Woman big by another Man, and the Woman be deliver'd after Marriage, or if a Woman Elope, and has Issue in Adultery, the Issue is a *Mulier* by the Common-Law, but a *Bastard* by the Canon-Law. At *Merton*, 20 *Hen. III.* the Bishops propos'd in Parliament, that the Issue had before Marriage should be *Legitimated*, according to the Civil and Canon-Law, if the Parents did afterwards marry; but the Answer was *Nolumus Leges Angliæ mutari*. Therefore if general Bastardy be objected against any one in Common-Law (that is, if the Defendant allege that the Plaintiff's Parents were never married) the use has been to send a Writ from the Temporal Court to the Bishop, that he would, by an Instrument under Seal, after Enquiry and Examination made, determine whether the Plaintiff were a *Bastard* or not, *Stat. 9 H. VI. c. 11.* but if the Marriage be confessed, and the Dispute be, whether the Party were born after or before, then it shall be try'd by the Country, that is, by a *Jury*; and when a Person is found to be born of Parents married, but before Marriage, this is call'd *Special Bastardy*.

CONSULTATION.

'When the Temporal Judges on sight of the Plaintiff's *Libel* *, conceive, that the Plaintiff

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* *Libel* in the Ecclesiastical Court is much the same with that which is called a Declaration in the Common-Law, a Bill in Courts of Equity.

‘tiff cannot have Remedy in the Temporal Courts, the Plaintiff shall have *Consultation*, i. e. the Temporal Judges shall write to the Ordinary that he proceed, notwithstanding the *Prohibition*. Stat. 24 Ed. I. c. 2.

‘And no *Prohibition* shall be granted after *Consultation* duly had, so as the Matter of the *Libel* be not changed. 50 Ed. III. c. 4.

‘He that sues for a *Prohibition* has six Months time to prove his Surmise, or Allegation; and if he prove it not in that time, shall pay double Costs, and a *Consultation* shall be granted. Stat. 2, 3 Ed. VI. c. 13.

‘And ’tis a stated Rule not to grant *Prohibition* after Sentence is pass’d in the Ecclesiastical Court, or after an Appeal is made, but not without some Exceptions.

Sir *Sim. Deggs*, a Professor of the Common-Law declares, that where one *Prohibition* was granted before Queen *Elizabeth’s* Time, a hundred have been granted since. *Parf. Couns.* p. 321.

But now, on the contrary, there is little occasion for *Prohibitions*; for ’tis very rare, that any Suit is commenced in these Courts, and they such as can be tried no where else, as for *Factionation of Marriage, Divorce, Legacies, &c.* and these mostly in the *Metropolitan Courts* (by permission of the Inferior Ordinary) for there they have *Advocates*, and *Proctors* that know how to draw a *Libel*, and are acquainted with the Forms of Law.

SUIT for TYTHES.

There is one sort of Causes, which were always thought peculiar to the Ecclesiastical Courts, and which were one main support of them: I mean for *Tythes*, and all *Church Dues*, and even the Statutes 32 *H. VIII. c. 7.* and 2, 3 *Ed. VI. c. 13.* restrain *Suits for Tythes to these Courts only.*

But there are two Proviso's in the Act last mention'd, of which the Temporal Courts have served themselves, the first, That *no Tythes shall be sued for, where none are due by Prescription, or Custom:* The other, that *no Plea shall be held of Tythes contrary to Circumspecte agatis, Articuli Cleri, Sylvæ Cæduæ, &c.* And 'tis to be remembered that Temporal Judges have the sole Privilege of interpreting Acts of Parliament. The two Jurisdictions had been old Rivals, the Temporal Courts at last carried the Day, and used their Victory most unmercifully.

However, till the last Age, all Suits for *Small Tythes* were commenced in the Ecclesiastical Courts long before, viz. 29 *Eliz.* forty Years after the Act of 2, 3 of *Edw. VI.* had been made, it was discovered that an Action at Common Law lay for substracting of *Prædial Tythes*, by that Statute; but Vicars for their small Tythes were still left to the slow Proceedings of the Ecclesiastical Courts.

Of suing in the Exchequer for Tythes.

As the Temporal Courts had long before the *Great Rebellion* cut the Claws, and tied the Hands of the Ecclesiastical; so by that wicked turn of Affairs which follow'd upon it, these Courts, and even Episcopacy itself, was for a time wholly sunk. Then Necessity taught those Lawyers, who were Friends to the Clergy, to sue for *Small Tythes* in the *Exchequer*. For as for *Great Tythes*, they were still recoverable as formerly, by Action at Common-Law. And during the Wars, and since, not only Vicars, but Rectors, have sued for all sorts of *Tythes* in the *Exchequer*; where *they pray by Bill*, that as Debtors to the King (as appears by Records of that Court, in which First-Fruits and Tenths use to be paid) they may have Justice done them against such Persons as withhold their *Tythes*. And the *Temporal Lawyers* say, that their Books furnish them with some very ancient Precedents to this Purpose.

There are in the *Exchequer* two Courts, the one of *Law*, where they proceed by *Latin Bills*, and in which all Causes are tried by a *Jury*, as in other Courts of Common-Law; the other of *Equity*, which proceeds by *English Bills*, where all Causes of *Tythes* are determined by the *Judges* and *Barons* only (tho' the *Lord Treasurer* and *Chancellor of the Exchequer*, 'tis said may sit with them, if they please); and certainly any one that has a just Cause, would rather chuse to have it tried by three or four grave, impartial, and judicious Professors of the Law

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(such are the *Brrons* of the *Exchequer*) than by any Jury, or single Judge in the Universe.

But in case any *Custom*, or *Modus Decimandi*, or the *Bounds of a Parish* come in dispute, the *Barons* are obliged to send these Points to be determined at *Common-Law*, by a *Jury*, (unless the proof of one side seem very clear indeed) and this makes these Suits oftentimes very chargeable; but then there is no fear of a *Prohibition*, and there lies no Appeal from this Court, but to the House of Lords only.

'Tis true, here you can sue only for the single Value of the Tythes, with Cost; nor indeed in any Court whatever, except it be for *Prædial Tythes*; and single Value with Costs, is as good as treble Damages without Cost, unless the Value of the Tythes be very great; and he that sues for *Treble Damages* is allow'd no Cost; so that tho' this be a chargeable Court, yet I have reason to believe, that the Clergy were never at a better Pass in this Point, since the Reign of *Henry VIII.* if ever they were before.

But there is a Clause in the Statute *for the Amendment of the Law, &c.* made last Session of Parliament, which may, perhaps, discourage Clergymen from suing in the *Exchequer*, I mean, that whereby it is provided, *that no Subpœna shall issue out of any Court of Equity, till the Plaintiff have first filed his Bill.* For by this means the Clergyman will be about 50*s.* or 3*l.* out of Pocket at first Stroke, whereas before, a *Subpœna* only, for the most part, brought the Adversary to Reason; and a great Part of those whom the Clergy have cause to sue, are scarce capable of bearing the Charge of a Bill,

Ec. There is indeed an excellent Clause in the *Act for the more easy Recovery of small Tythes*, viz. *If any Person complain'd of for withholding Small Tythes, do insist upon any Modus, Prescription, &c. and deliver the same in Writing to the Justices of Peace, the Justices are thereupon to desist; but the Person insisting upon this Modus, &c. shall give to the Party complaining, sufficient Security to pay all such Costs and Damages as may be given against him in any of His Majesty's Courts; and therefore if the Adversary be poor, and yet sturdy, 'twill be best to begin with him before the Justices, tho' you may have reason to believe that the Business will not end there.*

There is another Clause in the *Act for Amendment of the Law*, which Incumbents ought to be aware of, viz. *That upon the Plaintiff's dismissing his own Bill, or the Defendant's dismissing the same for want of Prosecution, the Plaintiff in such Suits shall pay to the Defendant his full Costs, to be taxed by a Master.*

All this consider'd, 'tis not improbable that Clergymen, in such Cases as are too small to be brought into the *Exchequer*, and too nice to be laid before *Justices of the Peace*, may, to make the Charge more easy to their Parishioners, betake themselves to the old Method of suing in the Ecclesiastical Courts, which are not at all affected by these two last mention'd Clauses of the *Act for the Amendment of the Law*; especially in such Cases, where the Defendants are not likely to be at the Charge of an *Appeal* or *Prohibition*, or when the Nature of the Cause is such, that he has no reason to fear any thing of

of this Nature: For he that has Cause to suspect that his Dispute cannot be ended in the Ecclesiastical Court, had better never begin there.

However, I think, no true Friend to our Constitution, can desire that these Courts should be wholly laid aside, but rather that they may gain Credit, and be more countenanced, than they have been of late; this I conceive, would be much for the Reputation, and Support of the Church: If there be in them any gross Corruptions, and Abuses, let them be Reform'd: If the Officers are guilty of any Mismanagement or Excesses, (and what Courts are altogether free from them?) let them be made sensible of their Errors, and by all proper means amended. May our Governors do whatever they shall find necessary for the Regulation of them, not for their Destruction; and perhaps, upon Enquiry, it would appear that one main Cause of all the Defects and Abuses, which are complain'd of in Ecclesiastical Officers, is really their Poverty, and want of Business.

And whatever Notions private Men may have had of this Matter, yet the Sovereign Authority of the Nation has always had a due regard to these Courts. *Henry VIII.* and his Parliament, notwithstanding all their Jealousy of Church-Power, yet were so far from any Design of taking away these Courts, that on the contrary, as has been said, they restrained *Suits* *to them only*; and to give the greater Authority and Weight to the Proceedings of Ecclesiastical Judges, they did, by two Statutes, *27. c. 20.* and *32. c. 7.* oblige the *Justices of Peace to commit to Prison, them that were*

guilty of any *Misdemeanor*, or *Contumacy* against the *Judge Ecclesiastical*; there to remain till they gave *Security* to perform the Sentence passed by the said *Judge*; and these Acts were passed after that King had renounced the Authority of the *Pope*, and assumed to himself the *Headship* of the Church.

In this King's Reign the whole Body of the Clergy were supposed to have incur'd a *Præmunire*, because all the *Prelates*, and *Proctors* of the Clergy had appeared before Cardinal *Woolsey* in his *Legatine Synod*, which he held by Authority of the *Pope*, without the King's *Licence*. They who did not appear in Person, had yet obeyed his *Mandates* for summoning this *Synod*, by giving their Voices, at the Election of *Proctors*; tho' it appears that the *Bishops* and Clergy acted with Reluctance in this Matter and probably had not comply'd, if they had not supposed, that they should have incur'd the Anger of the King, as well as Cardinal, by doing otherwise: for *Woolsey* was as great a Favourite at this time in the Court of *England*, as in that of *Rome*; and so continued, till the King found that both the *Pope* and Cardinal were resolved to disappoint him of his intended Divorce from Queen *Catherine*. However it were, it is certain that the Clergy were terrified with an Apprehension of having a *Præmunire* executed against them, that is, of being put out of the King's Protection, forfeiting all their Lands, and Goods, being imprison'd and ransom'd at the King's Will, if they could be found if not, then to be put in an *Exigent*, and outlaw'd, 1 Stat. 27 Edw. III. c. 1. Therefore, to

make

make fair Weather at Court, they gave the King, by way of Subsidy, a Ransom of 100000*l.* for the Province of *Canterbury*, 18840*l.* for that of *York*, they own his *Headship*, *quantum per Christi Legem licuit*, and begg'd his Pardon, which the King afterwards gave them by Act of Parliament.

But still the King and his Commons were not perfectly reconciled to the Clergy; 'because they had many *Canons* contrary to the Prerogative-Royal, the Laws of the Land, and the Rights of the Subject: and farther, they claim'd a Power of making more by their own Authority, without the King's License; therefore nothing would content the King, but that they should promise *in verbo Sacerdotii*, 'not to make any New *Canons* without the King's Consent, and that only so many of the old *Canons* should remain in Force, as by the Judgment of 32 Persons to be chosen by the King, (whereof 16 to be of the two Houses of Parliament, and 16 of the Clergy) should be approved; this was call'd *the Submission of the Clergy*, and was afterwards form'd into an Act of Parliament; but even in this Act, there is an exprefs *Salvo* for such *Canons* as are not contrariant to the Statutes and Customs of the Realm, nor to the Hurt and Damage of the King's Prerogative: and 'tis declared, that all such *Canons* shall now still be used and executed, till they be review'd, and determined by the said 32 Persons. 'Tis by these *Canons* (and those made since, by *Royal License*) that our Spiritual Courts now act: and 'tis evident that those old *Canons* are still in Force by Vir-

tue

tue of that Statute; because that *Review* and *Determination* was not made. The same Design was again set on Foot in the Reign of *Edward VI.* and an *Act* made to that purpose, and a Subcommittee of eight Persons did draw up a Body of *Church-Law*, which has been publish'd under the Title of *Reformatio Legum Ecclesiasticarum*; but this was never Authorized, either by the King, or Commissioners, so that we are still in *statu quo*, as to this Matter.

'Tis true, there was an *Act* pass'd 1 *Ed. VI. c. 2.* that *Process out of the Ecclesiastical Court shall be in the King's Name*; but it does not appear that it was intended by that *Act*, to lessen the Power of the Courts themselves; and, as has been observ'd, another *Act* was made in that Kings Reign, to secure the Conusance of Tythes to those Courts only.

In Queen *Mary's* Time both the *Submission Act*, and that of 1 *Ed. VI.* were repealed; and tho' that *Act* of repeal of Queen *Mary's* was it self repeal'd in the first of *James I.* yet all the Judges, *An. 1637.* gave it for Law, that the *Act* of 1 *Ed. VI.* was not now in force.

By the first of *Eliz.* the Statute of the first of *Mary*, by which the *Submission Act* was repealed, was itself repealed, and the *Submission Act* declared to be in full Force, yet the Clergy did not renew their Submission, and their former Submission under *H. VIII.* was annull'd by the *Act* of Queen *Mary*. And yet even in Queen *Elizabeth's* Time, the Authority of these Courts was reinforc'd by an *Act* of the 5th of her Reign; whereby severè Penalties are laid on those who
abscond

abscond, and do not yield themselves Prisoners to the Writ de Excommunicatio Capiendo.

King *James* and *Charles I.* did all that could in reason be expected in Favour of these Courts, and after the *great Rebellion*, by 13 *Car. II. c. 12.* these Courts have their former Jurisdiction restored to them.

In a word, 'twould be a dangerous, and wild attempt for Churchmen to do any thing that tends to the real Hurt, or Destruction of these Courts, except we could be very sure to have something better, and lasting, in the stead of them. They are of so great Antiquity, that they may vie with most other Courts upon this account; they are rivetted into the Constitution of our Church and State, and so cannot be removed, but the whole Building may thereby be endanger'd.

OF CHURCH DISCIPLINE.

I am sensible that some good Men are against them, because they cannot hope to see Church-Discipline reviv'd, while Ecclesiastical Power is managed as at present; this only shews, that those Courts must be reform'd, before they will be fit to reform others.

But to speak freely, no wise Man has any reason to hope that Church-Discipline can be restored in such an Age as this. Instead of many other Reasons I will give this, *viz.* that *there is not a Spirit in the English People to put the Penal-Laws against Vice in execution.* One is too Rich to be prosecuted, and no Officer dare meddle with him; another is too Poor, and if he
be

be prosecuted he will run away, and leave his Family to the Parish; and if a wealthy Man be presented, - he gets the Information withdrawn by seeing some Officer: if a poor Man, then no Ecclesiastical Officer will prosecute him, because he can get nothing by it; and the Church-Wardens, or Parish will not be at twenty Shillings Charge to bring an Offender to Penance. 'Tis too well known that *the Society for Reformation of Manners* would scarce get any to inform against others, except they could be promised that their Names should be conceal'd, which, tho' it were conniv'd at when practis'd by *Temporal Magistrates*, would never have been born, if practis'd by *Ecclesiastical Judges*; and if a set of the *Primitive Fathers* were to rise from the Dead, and sit Judges in the *Bishops Consistories*, yet how could they exercise Discipline without Evidence, or Information.

OATH ex Officio.

The *Canon-Law* had indeed a sort of Remedy in this Case, viz. that if any one were *commonly reported* to be guilty of any Crime, but there was no direct Proof of it, the Ordinary usually summon'd the *defam'd Person* to appear before him, and give an Oath to him, by which he was oblig'd to declare himself Guilty or not Guilty, (this was call'd the Oath *ex Officio*) and if he declar'd himself not Guilty, yet he was not acquitted, except he could produce six Persons, in lesser Crimes, as Fornication, twelve in greater, as Adultery, Heresy, &c. to declare on Oath that they believe him Innocent, these were

were called *Compurgators*. See *Prov. L. 5. T. 14.* This was thought very Inconvenient, and was therefore taken away by 13 *Car. II. c. 12.*

It does not appear how 'tis possible at present perfectly to revive Ecclesiastical Discipline, and any Church that desires a Legal Establishment, must be satisfied with a very moderate Degree of it; and yet, after all that has been said by Dissenters on this Subject, there is reason to believe, that there is as much occasion for the exercise of Discipline amongst them, as amongst us, and that we exercise it at least as much as they do, which all sensible Men will believe, till they see the contrary well proved.

In such an Age as this, an honest Clergyman must content himself with what he can do within his own Sphere, I mean, *by repelling all open Offenders from the Communion*, and taking all the Care he can, that his Church-Wardens be not forsworn; and if no other Motive will prevail upon them to act according to their Oath, perhaps this may, *viz.* that a *Presentment*, as things now stand, will do no Man any great Hurt, and that neither he nor the Offender will scarce ever hear of the thing after the Paper is once put into Court; the worst that the Party presented need to fear is, that some of the little Officers will squeeze a Piece of Money out of him, if he have any.

I shall only add the present means of Subsistence, which are left to the Ecclesiastical Courts.

Present

Present Subsistence of ECCLESIASTICAL COURTS.

1. The first is *Institution and Induction*. In Abp. Langton's Time, this was to be done *without Fee*. (See his *Constitution, Quia juxta*.) In Abp. Stratford's Time 'twas but 12 *d.* (See his *Constitution, Sava*.) which could not then be worth more than 20 *s.* at present. Clergymen now have two Instruments more upon Institution than they had then, *viz.* a Certificate of their Subscribing the 39 Articles, and another of their promising *Conformity*; allow 20 *s.* for each of these Instruments, the Sum total will be 3 *l.* I am afraid that young Incumbents are forced to pay in some Places more than double that Sum. If the Archdeacon Inducted in Person, he had by the Constitution of the said Archbishop, *Item quia*, 3 *s.* 4 *d.* if his Official, 2 *s.* Not to enlarge on this Matter, 'twere much to be desired, that there were in every *Ecclesiastical Office* a legible *fixt Table of stated Fees*, according to the 136 Canon, that there might be no room left for the oppressive Arts of inferior Officers.

2. Is the *Money paid by Church-Wardens* at the Visitations, and the Suits commenced by them against such as refuse to pay their *Church Rates*. For in this Case the Church-Wardens have no other Remedy; but only against *Quakers*, who are liable to be distressed. See Chap. 24. *versus finem*.

Some think it unreasonable that Men should be excommunicated for 12 *d.* as it may happen in this Case; but it ought to be remembered, that

that *Obstinacy* is as Criminal, if not more so, in small Cases as in great; and what Reason that he should be allow'd the Privilege of *Communion*, that will not in proportion contribute to that necessary Expence, without which, publick Worship and *Communion* cannot be perform'd?

3. Is the *Probat of Wills*, and granting of Letters of *Administration*, in case a Person die *Intestate*; the first has ever belong'd to Bishops, not only in this Country, but wherever Christianity has been establish'd; nor is there any other Court in which Wills can regularly be proved, excepting some particular Boroughs, where the Lord or chief Magistrate may do it by *Prescription*; and excepting such Wills, wherein only Lands and Hereditaments are devised, no Goods, or Chattels, for they may be proved in Temporal Courts. Indeed, the Power of granting *Administration* is own'd by the Constitution of *Othobon, Libertatem*, to have been secur'd to the Ordinary by King and Barons; and this was afterward confirmed by 13 *Ed. I.* and *Stat. 31 Ed. III. c. 11.* It is at least probable, that the Bishops before this had a Right to Administer, or grant *Administration*, but were interrupted in the Execution of it by Lords of Manours. One Reason why Bishops were intrusted with these Powers, was, that whatever was given to *Pious Uses* might faithfully be applied; and Wills, whereby such Charities are given, are by the Canonists call'd *Privileg'd Wills*; for in their Law, what would annul another Will, does not annul those; and formerly, *Ordinaries* had a Power of applying some

some part of the *Intestate's* Goods to Pious Uses, especially if the *Intestate* were a Clergyman: And by a Statute of 17 *Edward II.* *The Profits of the Lands of Ideots, if there be any at the time of their Deaths remaining, more than was necessary for the use of them and their Families, shall be distributed for their Souls by the advice of the Ordinary.* This is still in Force.

The *Proving of Wills*, and the Suits that are on this Account commenced in these Courts, seems at present to be the most gainful Business that belongs to them, especially with that which attends it, the granting *Administration*; but the most profitable part of this last is lost off from these Courts, by *Stat. 1 Jac. II. c. 17.* whereby the Ordinary is prohibited from calling Administrators to Account before him, except it be *at the Instance of some Party*, whereas before, the Ordinary could do it *ex Officio*, by virtue of *Stat. 31 Ed. III. and 22, 23 Car. II.*

4. The last Support of these Courts is *granting Licenses for Marriage without Banns*, and *Matrimonial Causes*; for these Matters are purely Ecclesiastical Conusance, and if Suits be commenced here for *Divorce*, or *Alimony*, no Prohibition lies, nor can such Causes be tried in any other Courts, except they come by Appeal into the House of Lords.

There is one thing, which if effected, would be a considerable Addition to the Business and Revenue of these Courts, that is, if *Divorce for Adultery*, or *Cruelty*, were allowed to be *à Vinculo*, and a second Marriage permitted to the Innocent Party. By the old and present Canon-Law, *Divorce à Vinculo* is never permit-

ted, but when the Marriage was null *ab initio*, by reason of *Consanguinity*, *Precontracts*, or *Impotence*. If it be for *Adultery*, or *Cruelty*, then 'tis only a *Mensâ* and *Thoro*, and so the Parties have no other Relief from these Courts, but what they have by their own mutual Consent, which is to part and live asunder.

But it appeared in the Case of the late Duke of *Norfolk* and Earl of *Anglesey*, that it was the Opinion of many of our great Prelates, that in case of *Adultery* or *Cruelty*, the Holy Scripture allows of a *Divorce à Vinculo*, tho' our Law does not, and I think, most Divines of Note seem to incline this way; and the Reformation, *Leg. Eccl.* determines for it. And there are great Authorities alledg'd for it from the ancient Fathers and Councils, and even from some Divines of great Names in the Church of *Rome* itself.

This Alteration cannot be made by Convocation without a concurrent Act of Parliament, for it is not only the 107th Canon, and the whole Tenor of the old Canon-Law that forbids it, by obliging Persons, *before they are divorced, to give Security, that they will not contract Matrimony with any other Person, during each other's Life*; but Marriage on such *Divorce* is null at Common-Law. *Godol. c. 26. sect. 12.* (tho' there is one Precedent to the contrary, *ibid. sect. 5.*) and Common-Law cannot be alter'd but by Parliament: But if this were once done, it might bring a plentiful Harvest to the Ecclesiastical Courts.

Some

Some Advertisements not easily reduced
to the former Heads.

Of Publishing Things in the Church.

THere are great Innovations, especially in some Country Churches, in publishing, or giving notice of the most frivolous, unbefitting, and sometimes ridiculous Things in the face of the Congregation.

As the Minister is to publish nothing himself, but *what comes from the King or Ordinary*, or is prescribed by the Liturgy (not Orders from any Justices of Peace, Commissioners, &c. so he ought, so far as in him lies, to take care, that no one else publish any thing during *Divine Service*.

'Tis true, by *Statute 6, 7 W. III.* Clergymen were obliged immediately after *Morning-Prayer*, to read, or cause to be read, the Rates, or Assessments for *Birth, Burials, and Marriages*, under 5*l.* Penalty; but the Parliament, 9, 10, of the same Prince, seems to have been sensible of the Unreasonableness and Indecency of having things of this nature read amidst Divine Offices, and blending Temporal Matters with Sacred, and so Repealed this Clause of the Act; and it is to be hoped, that this Injunction will never be drawn into Precedent by future Parliaments.

And yet the Surveyor of the Highways is to publish his Presentments in Church, after Sermon. 3, 4 *W.* and *M. c.* 12.

And

And the Names of Persons newly come to be Inhabitants, may, at their Request, be publish'd after *Divine Service*. 'Tis not said, who shall publish them; but the Church-Wardens and Overseers are to take care that it be done, 3, 4 *W. and M. c.* 12.

To prevent publick Proclamation of Parish-Meetings in the Church, it is provided, by 43 *El.* 2. that 'the Parish Officers shall have a stated time of Meeting, to adjust Matters relating to the Poor, viz. *On Sunday after Evening Service Monthly*: And, upon default, they forfeit 20*s.* The Minister will do well to see this Clause put in Execution upon many Accounts. But the Calling of Parish-Meetings in the Church cannot now be wholly prevented. However, sure a Minister may put a stop to what seems perfectly scandalous; which is the publishing Hue and Cries, and Enquiries after lost Goods, in the Church. Who knows where this will end?

The Act *For the more effectual Suppressing prophane Cursing and Swearing*, 6, 7 *Gul.* is to be read the first Sunday after every Quarter-Day, under 20*s.* Penalty, if *Information be made within ten Days*.

Affidavits for Burying in Woollen.

'By Statute' 30 *Car. II. c. 3.* & 32 *ejusdem, c. 1.*
'The Curate of every Parish is to keep a Register, to be provided at the Charge of the Parish, wherein to enter all Burials and Affidavits of Persons being buried in Woollen, and if no Affidavit be brought in eight Days (which are to be reckon'd from the Hour in which the Corps

Corps was buried) ' he must enrer a Memorial
 ' of this Default, over against the Name of the
 ' Party interr'd, and of the time when he gave
 ' notice of this Default to the Parish-Officers,
 ' which Notice must be given in Writing, under
 ' the Curate's Hand. There is no Time prescri-
 ' bed by the Act, within which this Notice is to
 ' be given; but it is most safe to do it as soon as
 ' the eight Days are expired. The Curate making
 ' Default in any Particular, forfeits 5*l*.

' The Affidavit shall be taken by any Justice
 ' of Peace, Mayor, or such like Chief Officer in
 ' the Parish where the Body was buried; and
 ' if there be no such Officer, then by any Cu-
 ' rate within the County where the Corps was
 ' Buried, (excepting him in whose Parish the
 ' Corps was buried), who must administer the
 ' Oath, and set his Hand *gratis*. The Affida-
 ' vit must be signed, and sealed, by two Witnes-
 ' ses, who were at the making of it. No Af-
 ' fidavit is necessary for a Person dying of the
 ' Plague.

P O O R - R A T E S.

Tythes are chargeable to the *Poor-Rates*, by
 the 43 *Eliz.* and therefore it can't be disputed,
 but an Incumbent shall be charged for what
Tythes he takes in Kind.

But if the *Tythes* be let out, or Leased,
 then it is in the Tenant's part to pay the *Poor-*
Rates, as in all other Cases. And the Case is
 the same, if they be compounded by voluntary
 Agreement.

The only Question is, concerning *Modusses*, whether they ought to be assessed to him that pays, or to him that receives them? I take it for granted, that what is paid in Money instead of Tythes, is really but an old Rent, or Composition for Tythes; and that therefore in Reason what is paid for the Maintenance of the Poor, ought to be paid by him who pays the Rent. What Lord of a Manour is fessed to the Poor for his Quit-Rents, which are Compositions paid by those who hold Land of the Manour, in lieu of some old Services due to the Lord, or fixt unalterable Rents due to him, as *Modusses* are to the Parson. I don't find any Book-Cases relating to this Matter, but I fear that in some Places poor Vicars, for want of good Advice, or for Peace-sake, or thro' the Terror of great Neighbours, are obliged to pay to the Poor for these *Modusses*.

However, in one Case the Law is clear, that no Parson, or Vicar, shall be charged to the Church-Rates, for his Manse, Glebe, or Tythes.

And farther, the Minister and Church-Wardens of every Parish, are by the Injunctions of Ed. VI. and Q. Elizabeth, and by the LXX Canon, to keep a Register of all *Chriftenings*, *Marriages* and *Burials*; to which, if fairly kept, and subscribed, the Common-Law gives Credit.

I take it for certain, that the Incumbent, or his Representative, hath of common Right not only a Vote in Vestries, but is likewise to preside in them; as having a greater Right in the Place where they are holden, and in the Affairs there to be transacted, than any one single Man. Yet if the Vestry be held for chu-
sing

sing Church-Wardens, or a Parish-Clerk in a Church where the whole Right of Election is in the Parishioners, it may be justly question'd whether the Incumbent can have a Right even of being present at such Elections.

A Distinction is also to be made between Vestries, and Meetings for Parish-Business. Vestries are for what concerns the Church, and is of Ecclesiastical Cognizance. But by *Stat. 43 Eliz. c. 2.* Church-Wardens and Overseers are to meet once a Month in the Church on *Sunday* after *Divine Service* to regulate the Maintenance of the Poor: And they may, no doubt, call whom they please to their Assistance. By *Statute 3, 4 of W. and M.* all the Inhabitants are to meet for chusing Surveyors of the Highway, and for taking the old Surveyors Accounts. The *Statute* does not mention the Incumbents on these Occasions. Yet of old, few Justices would pass any thing that was not subscrib'd by the Minister.

To sum up all that has, or can be said on this Subject, 'tis this; that the Duty, Labour, Business, and Burden of the Clergy, have now for some Ages been encreasing; but all this time their Maintenance, Privileges, and Encouragements, have been in a declining Condition. The Clergy, in Times of Popery, were, for Ignorance, and pious Frauds, Rewarded with a double Portion of Wealth, and Honour; and since the Reformation, for telling the plain Truth, they have been requited with Poverty and Contempt. For I don't remember any temporal Advantage that the Clergy have gain'd in these last Ages, excepting that of *Wives*, by

Statute 2, 3 *Edw. VI. c. 12.* 5, 6 *Edw. 6. c. 12.*

But, as by this means the Clergyman's Family has been enlarged; so there has been very little done to enable him to maintain it, except by some private Benefactions, here and there. Till the Seventeenth Year of King *Charles II.* no Impropiator could, by Law, restore the Tythes to the Church to which they originally belong'd: I mean as the Laws were then understood; and yet, during all that time, and even to this Day, Ecclesiastical Benefices may be taken from the Parochial Clergy, and appropriated by King, Ordinary, and Patron, in their Vacancy; for this has never yet been prohibited by any Statute. By the aforesaid Act of *Car. II.* the Church is made capable of receiving her own again, if Impropiators think fit to give, or sell it. And by the same Law, the Statutes of *Mortmain* are so far relax'd, that any Incumbent may receive, or purchase Lands or Hereditaments, so far as to make his Benefice 100*l. per An. de Claro.* And by 2 *An.* a Benefice wanting competent Maintenance, may be augmented, without Limitation. There is no great fear of Excess. By the same Act, the *First-Fruits and Tenths* are given for the use of the poorer Clergy, by which, and some other Acts in the Reign of the late Queen, more has been done for the Relief of the Clergy and the Church, than in some Ages before.

APPENDIX.

Nº I.

A Form of PRESENTATION to a Vacant Benefice.

Reverendo admodum in Christo Patri, & Domino, Domino G. Permissione Divina,—
Episcopo, ejusve in absentia Vicario suo in Spiritualibus generali, aut alii cuicunque in hac parte sufficientem Authoritatem habenti: Prænobilis A. C. Baro de F. verus & indubitatus Patronus Rectoriæ [Vicariæ, *if it be a Vicarage*] Ecclesiæ Parochialis de M. Salutem in domino sempiternam. Ad Ecclesiam Parochialem [*or Vicariam Ecclesiæ Parochialis, if it be a Vicarage*] de M. prædictæ vestræ Dioceseos modo per mortem naturalem N. P. ultimi Incumbentis ibidem vacantem, & ad meam Presentationem plene jure spectantem; delectum mihi in Christo S. R. Artium Magistrum, [*or Baccalaureum*] Clericum, Paternitati vestræ præsentem, humiliter supplicans, ut præfatum S. R. ad dictam Rectoriam [*or Vicariam*] admittere, ipsumque in Rectoriam [*or Vicariam*] ejusdem Ecclesiæ institui, & induci facere cum suis juribus, & pertinentiis universis, cæteraque omnia, & singula peragere, & adimplere in hac parte, quæ a vestrum munus Episcopale pertinere videbitur, dignemini cum favore. In cujus rei Testimonium, his præsentibus, Sigillum meum apposui.

Datum

Datæ—die O. Anno Regni Dominæ nostræ Georgii, Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, Fidei Defensoris, &c. primo, Annoq; Dom. 1730.

And if the Bishop be Inhibited, or the See void, yet this Presentation is good, which cannot be said of the common Forms.

Nº II.

A Form of a Testimonial, that the Incumbent hath performed all things, after his Induction, according to the Act of Uniformity.

WE whose Names are underwritten, do hereby certify, that C. B. Rector of F. within the Diocese of E. or County of S. on the Day of in the Year being a Lord's-Day, did read in his Parish-Church aforesaid, openly, publicly and solemnly, the Morning and Evening-Prayer, appointed to be read by, and according to the Book entitled, *The Book of Common-Prayer, &c.* at the time thereby appointed; and after such Reading thereof, did openly and publicly, before the Congregation there assembled, declare his unfeigned Assent and Consent to the Use of all things therein contained and prescribed, according to this Form, viz. I C. B. do here declare my unfeigned Assent and Consent to all, &c. (writing the Form *verbatim*) also that he did publicly and openly, on the Day and Year aforesaid, in his Parish-Church aforesaid, in the presence of the Congregation there assembled,

in the time of Divine Service, read a Certificate, under the Hand and Seal of the Right Reverend Father in God, G. Lord Bishop of — (*inserting the very Words of the Certificate*) and after the Reading thereof, did, at the same time, and in the same place, the Congregation being present, read the Declaration or Acknowledgment contained in the said Certificate, viz. *I will conform to the Liturgy of the Church of England, as it is now by Law established.* And lastly, that on the Day and Year aforesaid, he did read the Articles of Religion, commonly called, *The Thirty Nine Articles agreed upon in Convocation, in the Year 1562.* in his Parish-Church aforesaid, in the time of *Common-Prayer* there; and did declare his unfeigned Assent thereto. And these things we promise to testify, upon our corporal Oaths, if at any time we shall be duly called thereunto. In witness whereof, we have hereunto set our Hands, this Day of
in the Year of our Lord —

J. B. T. D. N. F.

Nº III.

A Qualification for a Nobleman's Chaplain.

UNIVERSIS & singulis præsentēs Literas inspecturis, siue quos infrascripta tangunt seu tangere poterint in futurum, *Willielmus Dom' H —* Baro de S — Salutem: Noveritis me præfat' *W. Dom' H. &c.* de vitæ probitate, morum integritate, & Sacrarum Literarum scientia, de quibus *Georgius Duke*, Clericus, militi commendatus existit, ipsum *Georgium Duke* in numerum Capellanorum meorum Domestico-
corum

corum, ad deservendum mihi circa divina Officia, infra *Ædes* meas celebranda, assumpsisse, aggregasse, ascivisse, & admisisse: eumque in Capellanium meum domesticum assumere, aggregare, asciscere, & admittere per præsentes. Quorum vigore libere liceat & licebit eidem *Georgio Duke*, Capellano meo, omnia & singula Privilegia, Beneficia, Libertates, Præheminentias, & Immunitates Capellanis Baronum & Procerum in Statutis & Legibus hujus inclyti Regni *Angliæ* quomodocunque concessa & elargita consequi pariter & obtinere ad omnem juris effectum inde sequi valentem, illudque Universitati vestræ attestandum fore, duxi opportunum, sicque attestor per præsentes. Dat' sub manu, sigilloque meo ad arma, vicesimo die *Aprilis*, Anno Domini 1715. Annoque Regni Regis *Georgii*, Dei Gratia, *Angliæ*, &c. Secundo.

N^o IV.

A Grant of an Advowson, for one Turn.

TO all to whom these Presents shall come :
G. S. the true and undoubted Patron of the Rectory of the Parish-Church of *F.* in the County of *K.* and Diocese of *C.* Greeting in our Lord everlasting. Know ye, That I the said *G. S.* have given, granted, and by this my present Writing have confirmed unto *M. G.* of, &c. Esq; the first and next Advowson, Nomination, Presentation, and free Disposition of the aforesaid Rectory of the Parish-Church of *F.* with all the Members and Appurtenances whatsoever, willing, and by this present Writing granting, That it shall and may be lawful, to and for the

saïd *M. G.* his Executors and Administrators, to the saïd Church, with all Rights and Appurtenances whatsoever, whensoever, and howsoever, by Death, Resignation, Deprivation, Cession, Permutation, Dismission, or any other way, the same Church first and next shall happen to be void, any honest and learned Clerk to present, and all other things which to the saïd Charge or Office belonging, to do and fulfil, for the first and next Avoidance only, as fully, &c. as I my self might do, &c.

N^o V.*A Denation of a free Chapel.*

TO all, &c. *T. B.* of, &c. Greeting. Whereas the Free Chapel of *Y.* in the Diocese of *H.* is known to be void, and of Right doth belong to my Gift. Know ye, That I the saïd *T. B.* the saïd Chapel, with all its Rights and Appurtenances whatsoever, have given and granted to my well-beloved in Christ, *F. W.* Clerk, an honest and learned Man. And by virtue of these Presents the saïd *F. W.* in bodily possession of the saïd Chapel have inducted. In witness, &c.

N^o VI.*A Lease of a Rectory Improprate.*

THIS Indenture, &c. between *C. W.* of, &c. of the one Part, and *D. C.* of, &c. of the other Part, witnesseth, That the saïd *C. W.* for and in consideration of the Sum of, &c. the Receipt whereof the saïd *W.* acknowledgeth, and thereof, and of every part thereof, doth acquit

acquit, &c. the said *D. C.* his Executors, by these Presents hath demised, &c. unto the said *D. C.* and his Assigns, all that the Parsonage, Parish-Church of, &c. in the County of, &c. sometimes appropriate, united, belonging, or appertaining unto the College of *C.* with all Lands, Tenements, and all manner of Tythes and Tenthhs, Reversion and Reversions of Tythes or Tenthhs of Corn, Grain, Hay, Wool, Lamb, Flax, Hemp, Honey, and all manner of predial, personal and mixt Tythes or Tenthhs whatsoever, yearly coming, arising, growing and renewing within the said Parish, &c. aforesaid, or in any other Place or Places, Townships or Hamlets to the said Rectory, Parish-Church, or Chapel of, &c. belonging or appertaining, or used to be set, demised, or let, as Part, Parcel, or Member of the said Rectory, Parsonage, Parish-Church or Chapel of, &c. aforesaid: To have and to hold, &c. to the said *D. C.* and his Assigns, from the Day of the Date hereof, for and during, and unto the full End and Term of, &c. Yielding and Paying, &c. And the said *D. C.* for him, &c. doth Covenant, &c. to and with the said, &c. by these Presents, That he the said *D. C.* his, &c. shall and will, yearly, during the said Term of, &c. well and truly pay, or cause to be paid, unto the said *C. W.* &c. the said yearly Rent of, &c. by even and equal Portions, according to the true intent and meaning of these Presents. And the said *C. W.* for him, &c. doth Covenant, &c. That he the said *C. W.* &c. Yielding the Rent, and performing the Covenants, which on his and their Parts are to be done and performed, during the

said Term of, &c. shall and may peaceably and quietly have, hold, use, occupy, possess, and enjoy the said, &c. without the lawful Let, Trouble or Eviction of the said C. W. his Executors, &c. or of any other Person or Persons whatsoever, claiming or to claim, by, from, or under him, them, or any of them. In Witness whereof, &c.

N^o VII.*A Lease of a Parsonage for Term of Life.*

THis Indenture, made, &c. between F. F. Clerk, Parson, &c. of the one Part, and H. H. of, &c. of the other Part, Witnesseth, That the said F. F. for, and in Consideration of the Sum of, &c. whereof and wherewith the said F. F. acknowledgeth himself satisfied, &c. Hath demised, granted, set and to farm let, and by these Presents doth demise, &c. unto the said H. H. his Executors, &c. all that his Rectory or Parsonage of P. in the County of, &c. with all and singular Houses, Glebe-Lands, and all and singular the Appurtenances, set, let, lying and being in P. aforesaid, together with all manner of Tythes, as well personal as predial, and all Oblations, Profits and Commodities, growing, arising, or yearly coming in or out of the said Rectory or Parsonage, (the Profits arising and coming by reason of, or from any Burial unto the said Parson only excepted and reserv'd.) To have and to hold the said Rectory or Parsonage of P. with the Houses and Glebe-Lands thereunto belonging, together with all and singular the Tythes of Corn, Grain and Hay,

Hay, and privy Tythes, Offerings, Oblations, and all other Profits and Commodities accruing, growing, or yearly arising, or of right belonging to the said Rectory or Parsonage, (except as before excepted) unto the said *H. H.* his Executors, &c. from the Day of the Date hereof, for and during so long time as the said *F. F.* shall remain in his Natural Life; yielding and paying therefore, yearly and every Year, unto the said *F. F.* or to his Assigns, the Sum of, &c. of lawful Money, &c. at the four usual Feasts in the Year; that is to say, at the Feast of, &c. by even and equal Portions. In Witness whereof, &c.

No VIII.

A Resignation of a Benefice.

TO all Christian People to whom this present Writing shall come; *W. S.* Clerk, and late Parson of the Parish Church of *T.* in the County of *K.* send greeting in our Lord God everlasting. Know ye, That I the said *T.* for divers good and reasonable Causes and Considerations me moving, have clearly resigned and released unto the Patron or Giver of the Parsonage of *T.* in the said County of *K.* and Diocess of *L.* the free, and ample, and clear Disposition, and Gift of the same Parsonage; Together with all the Right, Demand or Title, which I might, should, or ought to claim or demand by any manner of means, for, touching, or in any wise concerning the same Parsonage of *T.* by reason either of Nomination, Assignment or Deputation thereof, at any time heretofore to me made, granted or assigned. And I the said

W. S. do by these Presents promise and grant, and at no times hereafter, do make any Claim or Claims, challenge or demand to the said Parsonage, or to any Duties whatsoever appertaining thereunto, might have grown due or payable unto me, by reason of the afore said Parsonage of T. In Witness, &c.

N^o IX.

Queen ANNE's Patent or Commission to the Governours of Her Charity to the Poor Clergy.

A *NNE*, by the Grace of God of *England, Scotland, France and Ireland*, Queen, Defender of the Faith, &c. To all to whom these Presents shall come, Greeting. As the Welfare and Support of the Church of *England*, as by Law Established, have been always Our greatest Care, so we have, since Our Accession to the Crown, frequently reflected on the miserable Condition of a very great Number of the Clergy of this Our Kingdom, by reason of the mean and insufficient Provision for their Maintenance in several Places, which tends very much to the Ruin of this Church: And in regard that the Arrears of Tenths due to our Exchequer, upon small Rectories and Vicarages, could not be answered without great Difficulties and Harships to the poor Incumbents, and that several of those Churches (for fear of incurring the full Payment of such Arrears) were held in Sequestration by Temporary Curates, without being regularly filled with Institution and Induction; We were resolved to do as much as in Us lay,
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towards easing of the Clergy, and were graciously inclined to think, That the Ministers who served those Cures might, in respect of their Poverty, be true Objects of Our Royal Compassion; and that it would tend to the Honour and good Discipline of the Established Church, if those Benefices were fill'd with able Clerks, legally Instituted and Inducted: And to the charitable Purpose aforesaid, We signed a Warrant, to authorize our Lord High-Treasurer to discharge the Arrears of Tenths, due upon the small Rectories and Vicarages, not exceeding Thirty Pounds *per annum*, by the most improved Valuations of the same, on Condition that the respective Churches were first filled with Institution and Induction: And Our Lord High-Treasurer signifi'd Our said bountiful Intention, by Letter directed to Our Archbishops and Bishops accordingly: And in order to settle a Fund for increasing the Maintenance of the poor Clergy, We commanded Our Right Trusty and Well-beloved Counsellor Sir *Charles Hedges*, Knight, one of Our Principal Secretaries of State, to deliver a Message in Writing, signed by Us, to Our most dutiful and loyal Commons of *England*, in Parliament assembled, declaring, That We having taken into our serious Consideration, the mean and insufficient Maintenance belonging to the poor Clergy, in divers Parts of this Kingdom, to give them some Ease, had been pleased to remit the Arrears of the Tenths to the poor Clergy; And that for Augmentation of their Maintenance, We would make a Grant of Our whole Revenue arising out of First Fruits and Tenths, as far as it then was or should become:

come free from Incumbrances, to be applied to this Purpose: And if the House of Commons could find any proper Method by which Our good Intentions to the poor Clergy might be made more effectual, it would be a great Advantage to the Publick, and very acceptable to Us. And whereas by an Act of Parliament made in the Second Year of Our Reign, intituled, *An Act for the making more effectual Her Majesty's Gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by Enabling Her Majesty to grant in Perpetuity the Revenues of the First-Fruits and Tenths; And also, for Enabling any other Persons to make Grants for the same Purpose*; Reciting, That whereas at a Parliament holden in the Six and Twentieth Year of the Reign of King *Henry* the Eighth, the First Fruits, Revenues and Profits for one Year, upon every Nomination or Appointment to any Dignity, Benefice, Office, or Promotion Spiritual, within this Realm, or elsewhere within the said King's Dominions; And also a perpetual Yearly Rent or Pension, amounting to the Value of the Tenth Part of all the Revenues and Profits belonging to any Dignity, Benefice or Promotion-Spiritual whatsoever, within any Diocese of this Realm, or in *Wales*, were granted to the said King *Henry* the Eighth, his Heirs and Successors, and divers other Statutes have since been made, touching the First-Fruits and Annual Tenths of the Clergy, and the ordering thereof. And whereas a sufficient settled Provision for the Clergy, in many Parts of this Realm, hath never yet been made, by reason whereof, divers
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mean and stipendiary Preachers are in many Places entertained, to serve the Cures and officiate there; who depending for their necessary Maintenance upon the good Will and Liking of their Hearers, have been, and are thereby under Temptation of too much complying, and suiting their Doctrines and Teachings to the Humours, rather than the Good of their Hearers, which has been a great Occasion of Faction and Schism, and Contempt of the Ministry: And farther mentioning, That forasmuch as We taking it into our princely and serious Consideration, the mean and insufficient Maintenance belonging to the Clergy, in divers Parts of this Our Kingdom, have been most graciously pleas'd, out of Our most religious and tender Concern for the Church of *England*, (whereof Ourselves is the only supreme Head on Earth) and for the poor Clergy thereof, not only to remit the Arrears of our Tenth, due from Our poor Clergy, but also declare unto Our most Dutiful and Loyal Commons, Our Royal Pleasure, and Pious Desire, That the whole Revenue arising from the First-Fruits and Tenth of the Clergy, might be settled for a perpetual Augmentation of the Maintenance of the said poor Clergy, in Places where the same is not already sufficiently provided for, (to the end that Our most gracious Intentions may be made Effectual, and that the Church may receive so great and lasting an Advantage, from Our parting with so great a Branch of Our Revenue, towards the better Provision for the Clergy, not sufficiently provided for.) And to the intent Our singular Zeal for the Support of the Clergy, and the Honour, Interest, and future

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Security of the Church, as by Law Established, may be perpetuated to all Ages, it is Enacted, That it shall and may be lawful for Us, by Our Letters Patents under Our Great Seal of *English*, to incorporate such Persons as we shall therein Nominate or Appoint, to be one Body Politick and Corporate, to have a Common Seal, and perpetual Successions; And also at Our Will and Pleasure, by the same, or any other Letters Patents, to grant, limit or settle, to or upon the said Corporation, and their Successors for ever, all the Revenue of First-Fruits, and yearly perpetual Tenths of all Dignities, Offices, Benefices and Promotions-Spiritual whatsoever, to be applied and disposed of, to and for the Augmentation of the Maintenance of such Parsons, Vicars, Curates and Ministers, Officiating in any Church, or Chapel within the Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick upon Tweed*, where the Liturgy and Rites of the Church of *England*, as now by Law Established, are or shall be used and observed, with such Lawful Powers, Authorities, Directions, Limitations, Appointments, and under such Rules and Restrictions, and in such Manner and Form as shall be therein expressed: The Statute made in the first Year of Our Reign, intituled, [*An Act for the better Support of Her Majesty's Household, and of the Honour and Dignity of the Crown*] or any other Law to the contrary in any wise notwithstanding. Provided always, and it is thereby declared, That all and every the Statutes and Provisions, touching or concerning the Ordering, Levying, and true Answering and Payment,

Payment, or Qualification of the said First-Fruits and Tenths, or touching the Charge, Discharge or Alteration of them, or any of them, or any matter or thing relating thereunto, which were in force at the time of making the said Act, shall be, remain and continue in their full Force and Effect, and be observed and put in due Execution, according to the Tenours and Purports of the same, and every of them; for such Intents and Purposes, nevertheless, as shall be contained or directed, in or by the said Letters-Patents. Provided also, That the said Act, or any thing therein contained, should not extend to void, or any way impeach, or affect any Grant, Exchange, Alienation or Incumbrance at any time heretofore made, of or upon the said Revenues of First-Fruits and Tenths, or any part thereof; but that the same shall, during the continuance of such Grants, Exchange, Alienation or Incumbrance respectively be and remain, of and in such Force and Virtue, and no other, to all Intents and Purposes, as if the said Act had not been made. And for the Encouragement of such well-disposed Persons, as shall by Our Royal Example, be moved to contribute to so pious and charitable a Purpose, and that such their Charity may be rightly applied, it is also enacted, That all and every Person and Persons, have in his or their own Right, any Estate or Interest in Possession, Reversion or Contingency, of or in any Lands, Tenements or Hereditaments, or any Property of or in any Goods or Chattels, shall have full Power, License and Authority, at his, her and their Will and Pleasure, by Deed enrolled in such manner,
and.

and within such time, as is directed by the Statute made in the Twenty Seventh Year of the Reign of King *Henry* the Eighth, for Enrolment of Bargains and Sales, or by his, her or their last Will or Testament in Writing, duly executed according to Law, to give and grant to, and vest in the said Corporation and their Successors, all such his, her, or their Estate, Interest or Property in such Lands, Tenements and Hereditaments, Goods and Chattels, or any Part or Parts thereof, for and towards the Augmentation of the Maintenance of such Ministers as aforesaid, Officiating in such Church or Chapel, where the Liturgy and Rites of the said Church, are or shall be so used or observed, as aforesaid, and having no settled, competent Provision belonging to the same, and to be for that Purpose applied according to the Will of the said Benefactor, in and by such Deed enroll'd, or by such Will or Testament executed, as aforesaid expressed: And in Default of such Direction, Limitation, or Appointment in such manner, as by Our Letters Patents shall be directed or appointed, as aforesaid: And such Corporation, and their Successors, shall have full Capacity and Ability to purchase, receive, take, hold, and enjoy for the Purposes aforesaid, as well from such Persons as shall be so charitably disposed to give the same, as from all other Persons as shall be willing to sell or alien to the said Corporation, any Manours, Lands, Tenements, Goods or Chattels, without any License or Writ of, *Ad quod damnum*, the Statute of *Mortmain*, or any other Statute or Law to the contrary notwithstanding. Provided always, That the said Act, or any thing therein

therein contained, should not extend to enable any Person or Persons being within Age, or of *non-sanæ* Memory, or Women-Coverts, without their Husbands, to make any such Gift, Grant, or Alienation; any thing in the said Act contained to the contrary notwithstanding, as in, and by the said Act of Parliament may more at large appear. Now know ye, That We, to the end Our said Gracious Intentions may be made effectual, and that the Church may receive a great and lasting Advantage from Our parting with the said Revenue of Our First-Fruits and Tenths, towards the better Provision for the Clergy not sufficiently provided for, and pursuant to the said Act of Parliament, of Our especial Grace, certain Knowledge, and meer Motion, have Made, Appointed, Nominated, Constituted and Established, and by these Presents, for Us, Our Heirs and Successors, do Make, Appoint, Nominate, Constitute and Establish, Our most Dear Consort, Prince *George* of *Denmark*, Our High Admiral and Generalissimo of all Our Forces; the Most Reverend Father in God Our Right Trusty and Right Entirely beloved Counsellor, *Thomas* Lord Archbishop of *Canterbury*, and the Archbishop of *Canterbury* for the time being; Our Right Trusty and Welbeloved Counsellor Sir *Nathan Wright*, Knight, Keeper of Our Great Seal of *England*; the Most Reverend Father in God Our Right Trusty and Welbeloved *John* Archbishop of *York*, and the Archbishop of *York* for the time being; Our Right Trusty and Welbeloved Counsellor *Sidney* Lord *Godolphin*, Our High Treasurer of *England*; Our Right Trusty and Right Welbeloved Cousin
and

and Counsellor *Thomas* Earl of *Pembroke* and *Montgomery*, Our President of Our Council; Our Right Trusty, and Right Entirely beloved Cousin and Counsellor *John* Duke of *Normanby* and *Buckingham*, Our Keeper of Our Privy-Seal; Our Right Trusty and Right Entirely beloved Cousins and Counsellors *William* Duke of *Devonshire*, Our Steward of Our Household; *Charles* Duke of *Somerset*, Our Master of Our Horse; *James* D. of *Ormond*, Our Lieutenant-General and General-Governour of Our Kingdom of *Ireland*; *Charles* D. of *Bolton*, *Mainhardt* Duke of *Schomberg*, *Thomas* Duke of *Leeds*, *John* Duke of *Marlborough*, Our Captain General of all and singular Our Forces; and Master-General of Our Ordnance; Our Right Trusty and Right Welbeloved Cousins and Counsellors *Robert* Earl of *Lindsey*, Our Great Chamberlain of *England*; *Charles* Earl of *Carlisle*, Earl-Marshall of *England*, during the Minority of the Duke of *Norfolk*; *Henry* Earl of *Kent*, Our Chamberlain of Our Household; *Charles* Earl of *Dorset* and *Middlesex*, *George* Earl of *Norhampton*, *Charles* Earl of *Manchester*, *Thomas* Earl of *Stamford*, *Thomas* Earl of *Thanet*, *Charles* *Bodville* Earl of *Radnor*, *Charles* Earl of *Berkley*, *Daniel* Earl of *Nottingham*, *Laurence* Earl of *Rocheſter*, *Montague* Earl of *Abingdon*, Our Constable of the Tower of *London*; *Ralph* Earl of *Montague*, *Richard* Earl of *Scarborough*, *Francis* Earl of *Bradford*, Treasurer of Our Household; *Edward* Earl of *Jersey*, *Richard* Earl of *Ranelagh* in Our Kingdom of *Ireland*; Our Right Trusty and Welbeloved Cousin and Counsellor *Thomas* Lord

Lord Viscount *Weymouth*; the Right Reverend Father in God Our Right Trusty and Welbeloved Counsellor *Henry* Bishop of *London*, and the Bishop of *London* for the time being: Our Right Trusty and Welbeloved Counsellors *Robert* Lord *Ferrers*, *Thomas* Lord *Wharton*, *John* Lord *Pawlet*, *Robert* Lord *Lexington*, *William* Lord *Dartmouth*, *John* Lord *Granville*, *Heneage* Lord *Guernsey*, *John* Lord *Gower*, *Thomas* Lord *Conningsby*, of the Kingdom of *Ireland*; *Robert* *Harley*, Esq; Speaker of the House of Commons, and one of Our Principal Secretaries of State, and the Speaker of the House of Commons for the time being; *Peregrine* *Bertie*, Esq; Our Vice Chamberlain of Our Household; *Henry* *Boyle*, Esq; Chancellor and Under-Treasurer of Our Exchequer; *Thomas* *Mansel*, Esq; Comptroller of Our Household; Sir *Charles* *Hedges*, Kt. one of Our Principal Secretaries of State, Sir *John* *Holt*, Kt. Chief Justice of Our Court of *Queens-Bench*; Sir *John* *Trevor*, Kt. Master of the *Rolls*, and the Master of the *Rolls* for the time being; Sir *Thomas* *Trevor*, Kt. Chief Justice of Our Court of *Common-Pleas*; Sir *George* *Rook*, Kt. Vice Admiral of *England*; Sir *Edward* *Seymour*, Baronet, *James* *Vernon*, Esq; *John* *Smith*, Esq; and *John* *How*, Esq; and all and every the Privy Counsellors of Us, Our Heirs and Successors for the time being; all and every the Lieutenants, of, in, and for the several Counties within Our Kingdom of *England* and Dominion of *Wales*, now and for the time being; all and every the *Custodes Rotulorum* for the several Counties within Our Kingdom of *England*;

England: The Reverend Father in God, *Nathaniel* Bishop of *Durham*, *Peter* Bishop of *Winchester*, *William* Bishop of *Landaff*, *William* Bishop of *Worcester*, *Thomas* Bishop of *Rocheſter*, *Jonathan* Bishop of *Exeter*, *Gilbert* Bishop of *Sarum*, *Humphrey* Bishop of *Hereford*, *Nicholas* Bishop of *Cheſter*, *Simon* Bishop of *Ely*, *John* Bishop of *Litchfield* and *Coventry*, *John* Bishop of *Norwich*, *Richard* Bishop of *Peterborough*, *Edward* Bishop of *Glouceſter*, *John* Bishop of *Briſtol*, *James* Bishop of *Lincoln*, *John* Bishop of *Chicheſter*, *William* Bishop of *Oxford*, *John* Bishop of *Banger*, *William* Bishop of *Carlisle*, *George* Bishop of *Bath and Wells*, *William* Bishop of *St. Aſaph*; and all and every the Bishops of the ſeveral Dioceſes aforeſaid, for the time being; and the Bishop of *St. Davids* for the time being; the Deans of the ſeveral Cathedral Churches with in Our Kingdom of *England*, and Dominion of *Wales*, now, and for the time being; Our Truſty and Welbeloved Sir *Littleton Powis*, Sir *Henry Gould*, and Sir *John Powel*, Knights, Juſtices of Our Court of *Queens-Bench*, and the Chief Juſtice, and other Juſtices of the Court of *Queens-Bench*, for the time being; Our Truſty and Welbeloved Sir *Edward Nevil*, Sir *John Blencoe*, Knights, and *Robert Tracy*, Eſq; Juſtices of Our Court of *Common-Pleas*, and the Chief Juſtice, and other the Juſtices of the Court of *Common-Pleas*, for the time being; Our Truſty and Welbeloved Sir *Edward Ward*, Knight, Chief Baron of Our Court of *Exchequer*, Sir *Thomas Bury*, Kt. *Robert Price*, Eſq; and *John Smith*, Eſq; other the Barons of Our Court

Court of *Exchequer*, and the Chief Baron, and other the Barons of the Court of *Exchequer*, for the time being; Our Trusty and Welbeloved Sir *Thomas Powis*, Kt. Sir *Salathiel Lovel*, Kt. Our Serjeants at Law; Sir *Edward Northey*, Kt. Our Attorney-General; Sir *Simon Harcourt*, Kt. Our Solicitor-General; and the Serjeants at Law, Attorney-General, and Solicitor-General of Us, Our Heirs or Successors for the time being; Sir *Jon Cooke*, Kt. Doctor of Laws, Our Advocate-General, and the Advocate-General of Us, Our Heirs and Successors for the time being; the Chancellors and Vice-Chancellors of the Two Universities of *Oxford* and *Cambridge*, now, and for the time being; Our Trusty and Welbeloved Sir *John Parsons*, Kt. Mayor of Our City of *London*, and the Mayor of the City of *London* for the time being; all and every the Aldermen of the City of *London*, now, and for the time being; the Mayor of the City of *York* for the time being; and all and every the Mayors of the respective Cities within Our Kingdom of *England*, now, and for the time being, to be one Body-Politick and Corporate of themselves, in Deed and in Name, by the Name of, *The Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the poor Clergy*; And them one Body Politick and Corporate in Deed and in Name of, *The Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the poor Clergy*. We do for Us, Our Heirs and Successors, make, create, erect, establish, and confirm for ever, by these Presents; And by the same Name, they and their Successors shall have perpetual Succession,

sion, and shall and may have and use a Common Seal for the Business and Affairs of the said Body Politick and Corporate, and of their Successors, with Power to break, alter, and make new their Seal from time to time, at their Pleasure, or as they shall see Cause ; And by the same Name, they and their Successors shall be able and capable in Law to purchase, receive, take, hold, and enjoy, for the Purposes herein mention'd, as well from such Person or Persons who shall be so charitably disposed to give, (as from all other Persons who shall be willing to sell, alien, or assign) to the said Corporation hereby constituted, any Manours, Lands, Tenements, Hereditaments, Goods, Chattels, or Possessions whatsoever, of what Nature or Quality soever : And farther, by the same Name of, *The Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the poor Clergy*, They and their Successors shall and may sue and implead, and be sued and impleaded, and answer and defend, and be answered and defended in Courts of Record, or any other Place whatsoever, and before whatsoever Judges, Justices, Officers and Ministers of Us, Our Heirs and Successors, and in all and singular Pleas, Actions, Suits, Causes, and Damands whatsoever, of what Nature or Kind soever, in as ample and beneficial Manner and Form as any other Body Politick and Corporate, or any other the Liege People of *England*, being Persons able and capable in Law, may, or can have, take, receive, hold, keep, possess, enjoy, sue, implead, defend, or answer, or be sued, impleaded, defended or answered in any manner or wise, and shall and may do and execute

execute all and singular other Matters and Things by the Name aforesaid, that to them shall or may appertain to do, by virtue of the said Act, or of these Presents, or otherwise. And for the Ends and Purposes before expressed, and pursuant to, and by virtue of the said Act of Parliament, We have given and granted, and by these Presents, for Us, Our Heirs and Successors, do give and grant unto the said *Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the poor Clergy*, hereby Constituted, and their Successors, all the Revenues of First-Fruits, and Yearly Perpetual Tenths of all Dignities, Offices, Benefices and Promotions-Spiritual whatsoever payable to Us, Our Heirs and Successors, by virtue of the said Act of Parliament made in the Six and twentieth Year of the Reign of King *Henry* the Eighth, or by virtue of an Act of Parliament made in the First Year of the Reign of the late Queen *Elizabeth*, for Restitution of First-Fruits and Tenths to the Crown, or by virtue of any other Act or Acts of Parliament whatsoever, and all Arrears of the said First-Fruits and Tenths now due and undischarged (other than the Arrears of the Tenths due upon the small Rectories and Vicarages, under the Yearly Value of Thirty Pounds *per Annum*, by Us, as aforesaid, directed to be discharg'd) to be applied and disposed of by the said Governors hereby constituted, to and for the Augmentation of the Maintenance of such Parsons, Vicars, Curates, and Ministers Officiating in any Church or Chapel, within the Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick upon Tweed*, where the Liturgy and Rites

Rites of the Church of *England*, as now by Law established, or shall be used and observed, under such Rules, Restrictions and Directions, and in such Manner and Form, as shall be established pursuant to these Presents : And for the better ordering, managing, and directing the Affairs of the said Corporation, We do hereby for Us, Our Heirs and Successors, grant unto the Governors of the Bounty of Queen *Anne*, for the Augmentation of the Maintenance of the poor Clergy, and their Successors ; and We do hereby Ordain, Will and Appoint, That, as soon as conveniently may be, after the Date of these Presents, all and every the Persons herein before-named, and constituted Governors, as aforesaid, do assemble and meet together in the Room commonly called *The Prince's Chamber*, adjoining to the *House of Lords*, or some other convenient Place, within Our Cities of *London*, or *Westminster*, or the Suburbs thereof, as shall in that Behalf be appointed by any Seven or more of the Governors hereby constituted, (whereof We Will that any one of the Privy-Council of Us, Our Heirs and Successors, and any one of the Bishops aforesaid, or any one of the Judges of any of the Courts at *Westminster*, of the said Council learned in the Law, of Us, Our Heirs or Successors shall be Three) to treat and consult concerning the Business and Affairs of the said Corporation, and the good Rule and Government thereof, and the faithful Distribution of Our Royal Bounty aforesaid. And We do farther, by these Presents, for Us, Our Heirs and Successors, will, authorize, require and command the said Governors, and their Successors, from

from time to time, to summon, appoint, hold, and keep four general Courts at least in every Year, at any convenient Place or Places aforesaid (Notice being in that behalf first given, by inserting the same in the *Gazette*, or otherwise, Fourteen Days before the holding of every such General Court; one of the said four General Courts to be held and kept in the Month of *December*; another in the Month of *March*; another in the Month of *June*; and another in the Month of *September*. And We do also will, and by these Presents, for Us, Our Heirs and Successors, do grant and ordain, that all the said Governors, for the time being, or so many of them as shall at any time or times be assembled or met together, as aforesaid, being not less than Seven in Number at one Meeting, or Assembly in such General Court (of whom any one of the Privy-Council of Us, Our Heirs or Successors, and any one of the Bishops aforesaid, and any one of the Judges aforesaid, for the time being, or the said Counsel learned in the Law, of Us, Our Heirs and Successors, We will shall be always three) shall be, and be called a General Court of the said Corporation; and that in such General Courts, the said Governors and their Successors shall, and may do and dispatch, by majority of Votes, any Business relating to the Government and Affairs of the said Corporation; and also hear, debate, and determine any Complaint or Matter that shall be brought or exhibited in the said Court, touching the Affairs of the said Corporation, and shall, and may call to their Aid and Assistance, such Persons as the said General Court, or the major Part of them, assembled as

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aforesaid, shall think fit, to aid, assist, and advise the said Governors hereby constituted, and their Successors, in the due execution of the Powers and Authorities hereby granted. And for the better ordering and managing the Affairs of the said Corporation. We do hereby, for Us, Our Heirs and Successors, grant, authorize, and appoint, That the Governors of the said Corporation hereby constituted, and for the time being; or any Seven or more of them (of whom Three or more to be such as aforesaid) shall and may, from time to time, as often as they shall think fit, erect, nominate, and appoint such, and so many of the Governors of the said Corporation, for the time being, as they shall judge expedient, to be Committees of the said Corporation, for the better dispatching, and more easy managing and carrying on the Purposes aforesaid, and the true Intent and Meaning of these Presents; and to invest such Committees with such Powers, as the Governors of the said Corporation, assembled in a General Court, or the major Part of them so assembled, shall think fit to intrust them with, pursuant to Powers hereby given to the Governors herein beforenamed and constituted. And for the better effecting Our Will and Pleasure in these Presents declared, We do for Us, Our Heirs and Successors, authorize and command, *The Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the poor Clergy*, at their first, or some other subsequent Meeting or Meetings of the said Governors hereby constituted, or so many of them as shall then meet and be present (of whom any one of the Privy-Council aforesaid, for the time being, and any

any one of the Bishops aforesaid, for the time being, and any one of the Judges aforesaid, for the time being, or of the said Counsel learned in the Law, of Us, Our Heirs and Successors for the time being, We Will shall be Three at the least) to consider of, consult, advise, agree upon, draw up, prepare, and propose in Writing to Us, Our Heirs or Successors, such proper and necessary Rules, Methods, Directions, Orders and Constitutions, as the said Governors, or any Seven or more of them, as aforesaid, for the time being, shall in their Discretions judge most convenient to be observed, for and towards the better Rule and Government of the said Corporation, and the Members thereof; and the receiving, accounting for, and managing all and every the Revenues hereby granted, or mention'd to be granted, as aforesaid, and all Arrears thereof; and also for and concerning the Distribution, Paying and Disposing of the same, and all other Gifts and Benevolences, that shall or may be given or bequeathed to the said Corporation for the charitable Ends aforesaid, for the Augmentation of the Maintenance of the poor Clergy aforesaid; and such Rules, Methods, Orders, Directions and Constitutions, as shall be so proposed, and shall be approved, altered or amended by Us, Our Heirs or Successors, and so signified and declared by Us, Our Heirs, or Successors, under Our or Their Great Seal, We Will and shall be the Rules, Method, Directions, Orders and Constitutions, by which *The Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the poor Clergy*, and their Successors, shall receive, manage, govern,

apply and dispose Our said Royal Bounty, and other Gifts and Benevolences, which shall or may hereafter be given or bequeathed to the said Corporation, where the Donors thereof shall not particularly direct the Application thereof, to and for the Increase of the Maintenance of such Parsons, Vicars, Curates, and Ministers officiating in any Church or Chapel within the Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, where the Liturgy and Rites of the Church of *England*, as now by Law Established, are and shall be used and observed, for whom a Maintenance is not already sufficiently provided. And for the better enabling the Governors of Our Bounty aforesaid, to perform Our Will and Pleasure herein before expressed, We do hereby for Us, Our Heirs and Successors, authorize and require Our Keeper of Our Great Seal of *England* now being, or the Lord High Chancellor of *England*, or Keeper of the Great Seal of *England* for the time being, upon the Request of the said Governors hereby constituted, or any Seven or more of them (of whom any one of the Privy-Council aforesaid, for the time being, and any one of the Bishops aforesaid, for the time being, and any one of the Judges, and of the Counsel learned in the Law, as aforesaid, for the time being, We will shall be Three) to issue out Writs of Enquiry, under the Great Seal of *England*, unto all and every, or any the Counties and Cities in *England* and *Wales*, to be directed to such and so many Persons, as the said Keeper of the Great Seal of *England*, now and for the time being, or the Lord High-Chancellor of *England*

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for the time being, shall nominate, assign, or appoint, thereby authorizing and requiring them, or any Three or more of them, and giving them full Power and Authority, by the Oaths of good and lawful Men, and by all other lawful Ways and Means to enquire and find out (and likewise the said Governors hereby named and constituted, and any Seven or more of them, are hereby commanded and authorized to enquire, find out) and inform themselves by all lawful Ways and Means, of the true Yearly Value of the Maintenance of every Parson, Vicar, Curate and Minister officiating in any such Church or Chapel, within such Counties and Cities where the Liturgy and Rites of the Church of *England*, as by Law Established, are or shall be used and observed, from whom a Maintenance of the Yearly Value of Eighty Pounds is not sufficiently provided, and the Distances of such Churches and Chapels from Our City of *London*, and which of them are in Towns Corporate, or Market Towns, and which not, and how the several Churches and Chapels are supplied with Preaching Ministers, and where the Incumbents have more than one Living, that some Course may be taken for providing for the Augmentation of Maintenance, where the same may be found necessary. And We do farther hereby for Us, Our Heirs and Successors, authorize and require the said Governors, now and for the time being, or any Seven or more of them (of whom We will that any one of the Privy-Council aforesaid, for the time being, and any one of the Bishops aforesaid, for the time being, and any one of the Judges aforesaid, or

Of the said Council learned in the Law, of Us, Our Heirs or Successors be Three) from and after such Enquiry had and made, as aforesaid, to prepare and lay before Us, Our Heirs or Successors, a true State and Account of the Yearly Value of the Maintenance of all such Parsons, Vicars, Curates, and Ministers aforesaid, and also of the present Yearly Values of the said First Fruits and Tenths, and the Arrears thereof, hereby granted for the Augmentation of the Maintenance of the poor Clergy aforesaid; And also of such Pensions, Payments, or other Charges, as are now granted and payable out of the said First-Fruits and Tenths, by Letters, Patents, or otherwise therewith charged, to the End, that the same being satisfied and discharged, Our said Royal Bounty may be applied and disposed to, and amongst such of the Poor Clergy, the Augmentation of whose Maintenance will appear to be most necessary. And for the better managing, ordering, and governing the Affairs of the said Corporation, We do by these Presents, for Us, Our Heirs and Successors, grant to the said *Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy*, and their Successors; And do hereby ordain and appoint, that there shall be from time to time for ever, one able and sufficient Person to be nominated and chosen, as is herein after expressed, who shall be, and be called *Secretary of the Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy*, and who shall act and perform all such Matters and Things, for and on behalf of the said Corporation,

poration, as shall be found requisite and necessary to be executed and performed by him in such Office: And for the better Execution of Our Will and Pleasure in that behalf, We have named, constituted and appointed, and by these Presents, for Us, Our Heirs and Successors, do name, constitute and appoint Our Trusty and Welbeloved *John Chamberlaine, Esq;* to be the first and present Secretary to the *Governors of the Bounty of Queen Anne, for the said Augmentation of the Maintenance of the Poor Clergy*, who shall continue in the said Office of Secretary, during the Pleasure of the *Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy*. And We do farther, by these Presents, for Us, Our Heirs and Successors, grant unto the said *Governors of the Bounty of Queen Anne, for the said Augmentation of the Poor Clergy*, and to their Successors, that they and their Successors shall, and may have one able and sufficient Person to be nominated and chosen, as is herein after mentioned, who shall be, and be called *Treasurer to the Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy*; and also such inferior Officers, Substitutes, and Servants, as the said Governors for the time being, assembled in a General Court, shall by a majority of Votes think fit to chuse and elect; which inferior Officers and Substitutes so elected, We will and ordain for Us, Our Heirs and Successors, shall continue in their severall and respective Offices, during the Pleasure of the said Governors for the time being: And We have also named, con-

stituted and appointed, and by these Presents, for Us, Our Heirs and Successors, do name, constitute, and appoint Our Trusty and Welbeloven *Edward Tenison, Senior, Gentleman*, to be the first and present Treasurer to the *Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy*, to continue in the said Office of Treasurer during the Pleasure of the *Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy*; and farther, We do by these Presents for Us, Our Heirs and Successors, grant unto the said *Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy*, and their Successors, full Power and Authority from time to time, as often as it shall happen that any Secretary or Treasurer to the said *Governors* shall die, or be removed from his, or their respective Offices aforesaid, or whose Office or Offices shall otherwise become void, to elect and chuse, by a Majority of Votes of such *Governors* as shall be assembled in a General Court, some other fit Person or Persons into the Office or Offices of him or them who shall so die or be removed, as aforesaid, or whose Office shall otherwise become void; which Person or Persons to be chosen, shall continue in his or their Office or Offices whereunto he or they shall be so elected, during the Pleasure of the *Governors*. Provided always, and We do by these Presents, for Us, Our Heirs and Successors, Ordain and Appoint, That the said *John Chamberlain* and *Edward Tenison* herein beforenamed and constituted, to be the first and present Secretary and

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Treasurer to the Governors hereby incorporated, and their Successors; and also every Secretary and Treasurer hereafter to be elected, shall, before they take upon them the Execution of their several Offices respectively, take their Corporal Oaths for the due and faithful Execution of their several Offices, before any Seven or more of the Governors aforesaid, for the time being, in a General Court of the said Corporation, who are hereby authorized and required to give and administer to them the said Oaths from time to time accordingly. And the present Treasurer, and every future Treasurer, shall give sufficient Security to the said Corporation for his faithful Accounting for the Moneys he or they shall receive by virtue of the said Office. And having no doubt that not only the Governors herein beforenamed and constituted, but also a great Number of other Our good Subjects will be disposed to follow Our Example; and will with great Chearfulness and Readiness contribute to the farther Augmentation of the Maintenance of the Poor Clergy; We do by these Presents, for Us, Our Heirs and Successors, Authorize and Impower, *The Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy;* to take and receive from such of Our good Subjects, as shall be piously inclined to contribute to the Increase of Our Royal Bounty to the Poor Clergy, with such Voluntary Gifts, or Subscriptions of any Sum or Sums of Money, Goods or Chattels; or of, or for any Estate, or Interest, in any Manor, Lands Tenements, Rents, Hereditaments, or other Matters, or any things whatsoever, which

any Person or Persons, Bodies Politick or Corporate, shall be willing to Give, Limit, Appoint or Bestow, for or towards the farther Augmentation of the Maintenance of the Poor Clergy: and farther, to cause to be Collected and Received whatsoever shall be Given, Contributed, Bequeathed, Designed or Appointed for the Purposes aforesaid, by the Hands of the Treasurer to the said Corporation hereby Constituted, who shall be appointed to receive the same. And to the End Our Royal Intention in the Premises may be better known to Our Loving Subjects, We do hereby require the Governors herein beforenamed and constituted, or any Seven or more of them, to cause publick Notice of this Our Royal Charter, or the Tenour or Scope thereof, to be made in such Places, or by such Ways and Means as the said Governors, or any Seven or more of them shall think most conducive to the furtherance of the Bounty and Charity aforesaid. And farther, We do hereby, for Us, Our Heirs and Successors, give full Power and Authority unto the Governors aforesaid, and their Successors from time to time, and at all times hereafter, to admit into the said Corporation hereby Erected and Constituted, all and every such Person or Persons, who shall be piously disposed to contribute towards the farther Augmentation of the Maintenance of the said Poor Clergy, and the Advancing so good a Work, as the said Governors, in a General Court of the said Corporation, shall think fit to admit; which Person or Persons, when he is admitted into the said Corporation, shall be, and be deemed, called and reputed Members of the said Corporation, and
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from time to time shall and may vote and act in as ample Manner and Form, and have and enjoy such and the same Powers, Privileges and Authorities, as the other Governor or Governors of the said Corporation herein beforenamed, may vote and act, have, enjoy and perform, by Virtue of these Presents. And We do hereby, for Us, Our Heirs and Successors, Authorize and Impower the Governors hereby constituted, and their Successors, or any Seven or more of them (of whom any one of the Privy-Council aforesaid, for the time being, and any one of the Bishops aforesaid, for the time being, and any one of the Judges, or of the Counsel learned in the Law, of Us, Our Heirs or Successors, as aforesaid, to be There at least) in case they shall find the same necessary for carrying on and perfecting the pious Intentions and Designs of this Our Royal Charter, by Instruments of Writing, under the Seal of the said Corporation, to Depute and Substitute such Persons as they shall think fit to intrust, to take such Subscriptions, as aforesaid, and to collect and bring in the Moneys which shall be contributed, bequeathed, designed or appointed for the Ends and Purposes aforesaid, to the Hand of the Treasurer to the said Governors, for the time being, and to displace or discharge such Substitutes or Deputies, or any of them, and to appoint others in the Place of them, or any of them, from time to time, as the said Governors, or any Seven or more of them, (of whom Three or more to be such as aforesaid) shall see cause; and also to settle, establish, and appoint such Cheques, Comptrols and Orders, as they shall think necessary

cessary or safe for the full and due charging of the Treasurer, and also the said Deputies, and all and every other Person and Persons whatever, who shall receive or be chargeable with any Moneys, or other Profits for the said charitable Use or Purpose, to answer, pay, or account for the same. And We do hereby for Us, Our Heirs and Successors, Authorize, Require, and Command the said *Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the Poor Clergy*, from time to time, to cause to be entred in a Book, to be kept for that Purpose, the Names of the Persons who shall subscribe or contribute, give, devise, or appoint any Moneys, or any real or personal Estate, or other Matters or Things towards this charitable and good Design, with the Sums of Money, Goods, Chattels, Estates, or other Things by them respectively contributed, given, limited, appointed or devised, to the end a perpetual Memorial may be made of such well disposed Persons who shall become Benefactors, as aforesaid, and whereby the Treasurer to the said Corporation may be charged with more Certainty in this Accompt. And Our farther Will and Pleasure is, and We do hereby for Us, Our Heirs and Successors, give full Power and Authority unto the said *Edward Tenison*, and the Treasurer of the said Governors for the time being, from time to time, upon the Receipt or Receipts of any Sum or Sums of Money, or other Profits, for the Purposes aforesaid, or any of them, to give an Acquittance or Acquittances for the same, which shall be good and sufficient Discharges to all Intents and Purposes whatsoever.

ever. And the said Treasurer for the time being, in his Receipts, Payments and Accompts, shall be subject to such Inspections, Examination and Comptrol, as the said Governors for the time being, or any four or more of them (whereof such as are before appointed for the Special *Quorum*, to be Three at least) shall establish and appoint. And We do hereby for Us, Our Heirs and Successors, grant and declare, That these Our Letters-Patents, or the Inrolment thereof, shall be in and by all Things good, valid, and effectual in the Law, according to the true Intent and Meaning of the same, and shall be taken, construed, and adjudged in the most favourable and beneficial Sense, and to the best Advantage of and for the said Corporation, as well in all Our Courts of Record, as elsewhere: Notwithstanding the not reciting, or not truly or fully reciting of any Act or Acts of Parliament, of or concerning the said First-Fruits or Tenths hereby granted or mention'd to be granted, or any part or parcel thereof; and notwithstanding the not mentioning the true yearly Value of the said First-Fruits or Tenths, or any of them; and notwithstanding any Nonrecital, Misrecital, Defect, Incertainty, or Imperfection in these Our Letters-Patents contained, or any other Matter, Cause, or thing whatsoever. In Witness whereof, We have caused these Our Letters to be made Patents: Witness Our Self at *Westminster*, the Third Day of *November*, in the Third Year of Our Reign.

By Writ of Privy-Seal.

COCKS.

N^o X.

*An Act for the more Easy Recovery of
Small Tythes.*

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FOR the more easy and effectual Recovery of Small Tythes, and the Value of them, where the same shall be unduly Subtracted and Detained, where the same do not amount to above the yearly Value of forty Shillings from any one Person, be it Enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by the Authority of the same, That all and every Person and Persons shall henceforth well and truly set out and pay all and singular the Tythes, commonly called small Tythes, and Compositions and Agreements for the same, with all Offerings, Oblations, and Obventions, to the several Rectors, Vicars, and other Persons to whom they are or shall be due, in the several Parishes within this Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick upon Tweed*, according to the Rights, Customs and Prescription commonly used within the said Parishes respectively; And if any Person or Persons shall hereafter Subtract or Withdraw, or any ways fail in the true Payment of such Small Tythes, Offerings, Oblations, Obventions or Compositions, as aforesaid, by the space of Twenty Days at most after Demand thereof, then it shall and may be lawful for the Person or Persons to whom the same shall be due, to make his or their Complaint in writing unto

Two

Two or more of His Majesty's Justices of the Peace within that County, Riding, City, Town-Corporate, Place or Division, where the same shall grow due, neither of which Justices of Peace is to be Patron of the Church or Chapel whence the said Tythes, do or shall arise, nor any ways Interested in such Tythes, Offerings, Oblations, Obventions or Compositions aforesaid.

And be it farther Enacted, by the Authority aforesaid, That if hereafter any Suit or Complaint shall be brought to Two or more Justices of the Peace as aforesaid, concerning Small Tythes, Offerings, Oblations, Obventions, or Compositions, as aforesaid, The said Justices are hereby Authorized and Required to Summon in Writing under their Hands and Seals, by reasonable Warning, every such Person or Persons against whom any Complaint shall be made, as aforesaid; And after his or their Appearance, or upon Default of their Appearance, the said Warning or Summons being proved before them upon Oath, the said Justices of Peace, or any Two or more of them, shall proceed to hear and determine the said Complaint, and upon the Proofs, Evidences and Testimonies produc'd before them, shall in Writing under their Hands and Seals adjudge the Case, and give such reasonable Allowance and Compensation for such Tythes, Oblations, and Compositions so subtracted or withheld, as they shall judge to be just and reasonable, and also such Costs and Charges not exceeding Ten Shillings, as upon the Merits of the Cause shall appear Just.

And be it farther Enacted, That if any Person or Persons shall refuse or neglect, by the space of
Ten

Ten Days after Notice given, to pay or satisfy any such Sum of Money as upon such Complaint and Proceeding, shall by two or more Justices of the Peace be adjudged, as aforesaid, In every such Case, the Constables and Churchwardens of the said Parish, or one of them, shall, by Warrant under the Hands and Seals of the said Justices to them directed, distrain the Goods and Chattels of the Party so refusing or neglecting, as aforesaid, and after detaining them by the space of three Days, in case the said Sum so adjudged to be paid, together with reasonable Charges for making and detaining the said Distress, be not tendred or paid by the said Party in the mean time, shall and may make publick Sale of the same, and pay to the Party complaining, so much of the Money arising by such Sale, as may satisfy the said Sum so adjudged, retaining to themselves such reasonable Charges for making and keeping the said Distress, as the said Justices shall think fit, and shall render the Overplus (if any be) to the Owner.

Provided always, and be it Enacted, That it shall and may be lawful for all Justices of Peace, in the Examination of all Matters offered to them by this Act, to administer an Oath, or Oaths, to any Witness or Witnesses, where the same shall be necessary for their Information, and for the better Discovery of the Truth.

Provided also, and be it Enacted; That this Act or any thing herein contained; shall not extend to any Tythes, Oblations, Payments, or Obventions within the City of *London* or Liberties thereof, nor to any other City or Town Corporate, where the same are settled by any

Act

Act of Parliament in that Case particularly made and provided.

Provided also, and be it Enacted, That no Complaint for, or concerning any Small Tythes, Offerings, Oblations, Obventions, or Compositions hereafter due, shall be heard and determined by any Justices of the Peace, by virtue of this Act, unless the Complaint shall be made within the space of Two Years next after the times that the same Tythes, Oblations, Obventions and Compositions did become due or payable, any thing in this Act contained to the contrary notwithstanding.

Provided also, and be it Enacted, That any Person finding him, her, or themselves aggrieved, by any Judgment to be given by any Two Justices of the Peace, shall and may appeal to the next General Quarter-Sessions to be held for the County, Riding, City, Town-Corporate, or Division; and the Justices of the Peace there present, or the major part of them, shall proceed finally to hear and determine the Matter, and to Reverse the said Judgment, if they shall see Cause: And if the Justices then present, or the major part of them, shall find cause to Confirm the Judgment given by the first two Justices of the Peace, they shall then Decree the same by Order of Sessions, and shall also proceed to give such Costs against the Appellant, to be levied by Distress and Sale of the Goods and Chattels of the said Appellant, as to them shall seem Just and Reasonable; And no Proceedings or Judgment had, or to be had, by virtue of this Act, shall be removed or superseded by virtue of any Writ of *Certiorari*, or other Writ out of His

His Majesty's Courts at *Westminster*, or any other Court whatsoever, unless the Title of such Tythes, Oblations, or Obventions shall be in Question, any Law, Statute, Custom, or Usage to the contrary notwithstanding.

Provided always, and be it Enacted, That where any Person or Persons complained of for substracting or withholding any Small Tythes, or other Duties aforesaid, shall, before the Justices of the Peace to whom such Complaint is made, insist upon any Prescription, Composition or *Modus Decimandi*, Agreement or Title, whereby he or she is or ought to be freed from payment of the said Tythes, or other Dues in Question, and deliver the same in Writing to the said Justices of the Peace, subscribed by him or her, and shall then give to the Party complaining reasonable and sufficient Security to the Satisfaction of the said Justices, to pay all such Costs and Damages, as upon a Trial at Law to be had for that purpose, in any of His Majesty's Courts, having Cognizance of that Matter, shall be given against him, her, or them, in case the said Prescription, Composition or *Modus Decimandi*, shall not upon the said Trial be allowed, That in that Case, the said Justices of the Peace shall forbear to give any Judgment in the Matter: And that then and in such Case the Person or Persons so complaining, shall and may be at liberty to prosecute such Person or Persons for their said Substraction in any other Court or Courts whatsoever, where he, she, or they might have sued before the making of this Act, any thing in this Act to the contrary notwithstanding.

And

And be it farther Enacted by the Authority
aforesaid, That every Person and Persons, who
shall by virtue of this Act obtain any Judgment,
or against whom any Judgment shall be obtained,
before any Justices of the Peace out of Sessions,
for Small Tythes, Oblations, Obventions,
or Compositions, shall cause or procure the said
Judgment to be Inrolled at the next General
Quarter-Sessions to be holden for the said County,
City, Riding, or Division; and the Clerk
of the Peace for the said County, City, Riding,
or Division, is hereby required, upon tender
thereof, to inroll the same; And that he shall
not ask or receive for the Inrolment of any one
Judgment, any Fee or Reward exceeding One
Shilling; and that the Judgment so inrolled,
and Satisfaction made, by paying the same Sum
so adjudged, shall be a good Bar to conclude
the said Rectors, Vicars, and other Persons,
from any other Remedy for the said Small
Tythes, Oblations, Obventions or Compositions,
for which the said Judgment was obtained.

And be it farther Enacted by the Authority
aforesaid, That if any Person or Persons against
whom any such Judgment or Judgments shall
be had, as aforesaid, shall remove out of the
County, Riding, City, or Corporation, after
Judgment had, as aforesaid, and before the le-
vying the Sum or Sums thereby adjudged to
be Levied, the Justices of the Peace who made
the said Judgment, or one of them, shall certify
the same, under his or their Hands and Seals,
to any Justice of Peace of such other County,
City, or Place wherein the said Person or Persons
shall be Inhabitants; Which said Justice is here-
by

by Authrized and Required, by Warrant under his Hand and Seal, to be directed to the Constables or Church-Wardens of the Place, or one of them, to levy the Sum or Sums so adjudged to be levied as aforesaid, upon the Goods and Chattels of such Person or Persons, as fully as the said other Justices might have done, if he, she, or they, had not removed, as aforesaid, which shall be paid according to the said Judgment.

Provided always, and be it Enacted, That no Vicar or other Person shall have Remedy to recover Small Tythes or other Dues aforesaid, which became or were due before the making of this Act, unless Complaint be made to the Justices of the Peace in Form aforesaid, before the First Day of *October*, which shall be in the Year of our Lord One Thousand Six Hundred Ninety Six.

And it is hereby Declared and Enacted, That the said Justices of the Peace who shall hear and determine any of the Matters aforesaid, shall have Power to give Costs, not exceeding Ten Shillings, to the Party prosecuted, if they shall find the Complaint to be false and vexatious; which Costs shall be Levied in Manner and Form aforesaid.

Provided also, and be it farther Enacted, That if any Person or Persons shall be sued for any thing done in Execution of this Act, and the Plaintiff in such Suit shall discontinue his Action, or be Nonsuit, or a Verdict pass against him, that then, in any of the said Cases, such Person or Persons shall recover double Costs.

Provided always, That any Clerk or other Person or Persons, who shall begin any Suit for
Reco-

Recovery of Small Tythes, Oblations, or Obventions, not exceeding the Value of Forty Shillings, in His Majesty's Court of *Exchequer*, or in any of the Ecclesiastical Courts, shall have no Benefit by this Act, or any Clause in it, for the same Matter for which he or they have so sued.

Provided always, and be it farther Enacted, That this Act shall continue for the space of Three Years, and from thence to the End of the next Session of Parliament, and no longer.

N^o XI.

An ACT for making Perpetual an Act for the more easy Recovery of Small Tythes ; 3, 4 Annæ.

WHereas divers Temporary Laws, which by Experience have been found Beneficial and useful, are expired, or near expiring: Therefore, for continuing the same, Be it Enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by the Authority of same, That an Act made in the Session of Parliament held in the Seventh and Eighth Years of the Reign of the late K. *William the Third*, (Intituled, *An Act for the more easy Recovery of Small Tythes*) which was to continue for Three Years, and from thence to the End of the next Session of Parliament; which Act was farther continued by an Act made in the
Tenth

Tenth and Eleventh Years of the Reign of the said K. *William* the Third, for Seven Years from the Expiration thereof, which will expire at the End of the next Session of Parliament, after the Year One Thousand Seven Hundred and Five, shall be, and is hereby continued, and shall be in Force, and be made perpetual.

N^o XII.

An **ADMONITION** to all such as shall intend hereafter to enter the State of Matrimony, godly and agreeably to **LAWS**.

Marriage is honourable among all Men, and the Bed undefiled. But Whoremongers and Adulterers God will judge, Heb. 13. 4.

To avoid Fornication let every Man have his Wife, and let every Woman have her Husband, He that cannot contain, let him marry: For better it is to marry than to burn, 1 Cor. 7. 2, 9.

Unto the Married I command, not I, but the Lord: Let not the Wife depart from her Husband; but if she depart, let her remain unmarried; or be reconciled unto her Husband. And let not the Husband put away his Wife, 1 Cor. 7. 10, 11.

First, That they contract not with such Persons as be hereafter expressed, nor with any of like Degree, against the Law of God, and the Laws of the Realm.

Second.

Secondly, That they make no secret Contracts, without Consent or Counsel of their Parents or Elders, under whose Authority they be, contrary to God's Laws, and Man's Ordinances.

Thirdly, That they contract not anew with any other, upon Divorce and Separation made by the Judge for a time, the Laws yet standing to the contrary.

IT is to be noted, That those Persons which be in the direct Line ascendent and descendent, cannot marry together, although they be never so far asunder in Degree.

II. It is also to be noted, That Consanguinity and Affinity (Letting and Dissolving Matrimony) is contracted as well in them and by them which be of Kindred by the one side, as in and by them which be of Kindred by both sides.

III. *Item*, That by the Laws, Consanguinity and Affinity (Letting and Dissolving Matrimony) is contracted as well by unlawful Company of Man and Woman, as by lawful Marriage.

IV. *Item*, In Contracting betwixt Persons doubtful, which be not expressed in this Table, it is most sure, first to consult with Men learned in the Laws, to understand what is Lawful, what is Honest and Expedient, before the finishing of their Contracts.

V. *Item*, That no Parson, Vicar or Curate, shall Solemnize Matrimony out of his or their Cure, or Parish-Church or Chapel, and shall
not

not Solemnize the same in Private Houses, nor Lawless and Exempt Churches, under the Pains of the Law forbidding the same. And that the Curate have their Certificates; when the Parties dwell in divers Parishes.

VI. *Item*, The Banns of Matrimony ought to be openly denounced in the Church by the Minister three several *Sundays* or *Festival-Days*, to the end that they who will and can allege any Impediment, may be heard, and that Stay may be made till farther Trial, if any Exception be made there against it upon sufficient Caution.

VII. *Item*, Who shall maliciously object a frivolous Impediment, against a lawful Matrimony, to disturb the same, is subject to the Pains of the Law.

VIII. *Item*, Who shall presume to contract in the Degrees prohibited (tho' he do it ignorantly) besides that the Fruit of such Copulation may be judged unlawful, is also Punishable at the Ordinary's Discretion.

IX. If any Minister shall conjoin any such, or shall be present at such Contracts making, he ought to be suspended from his Ministry for three Years: and otherwise to be punished according to the Laws.

None

None shall come near to any of the Kindred of his Flesh to uncover their Shame: I am the Lord, Levit. 18. 6.

A Man may not marry his

<i>Secundus gradus in linea recta ascendente.</i>		
Con.	Avia.	1 Grandmother.
af.	Avia relicta.	2 Grandfather's Wife.
af.	Profocrus, vel focrus magna.	3 Wife's Grandmother
<i>Secundus gradus in æqualis in linea transversali ascendente.</i>		
Con.	Amita.	4 Father's Sister.
Con.	Matertera.	5 Mother's Sister.
af.	Patruī relicta.	6 Father's Brother's Wife.
af.	Avunculi relicta.	7 Mother's Brother's Wife.
af.	Amita uxoris.	8 Wife's Father's Sister.
af.	Matertera uxoris.	9 Wife's Mother's Sister.
<i>Primus gradus in linea recta ascendente.</i>		
Con.	Mater.	10 Mother.
af.	Noverca.	11 Stepmother.
af.	Socrus	12 Wife's Mother.

R.

Con.

A Man may not marry his

<i>Primus gradus in linea recta de- scendente.</i>		
Con.	Filia.	13 Daughter.
af.	Privigna.	14 Wife's Daughter.
af.	Nurus.	15 Son's Wife.
<i>Primus gradus æ- qualis in linea transversali.</i>		
Con.	Soror.	16 Sister.
af.	Soror Uxoris.	17 Wife's Sister.
af.	Fratris relicta.	18 Brother's Wife.
<i>Secundus gradus in linea recta de- scendente.</i>		
Con.	Neptis ex filio.	19 Son's Daughter.
Con.	Neptis ex filia.	20 Daughter's Daugh- ter.
af.	Pronurus, i. e. re- licta nepotis ex filio.	21 Son's Son's Wife.
af.	Pronurus, i. e. re- licta nepotis ex filia.	22 Daughter's Son's Wife.
af.	Privigni filia.	23 Wife's Son's Daugh- ter.
af.	Privignæ filia.	24 Wife's Daughter's Daughter.
<i>Secundus gradus in- æqualis in linea transversali de- scendente.</i>		
Con.	Neptis ex fratre.	25 Brother's Daughter

A Man may not marry his

Con.	Neptis ex sorore.	26	Sister's Daughter.
af.	Nepotis ex fratre re-	27	Brother's Son's
	lictæ.		Wife.
af.	Nepotis ex sorore	28	Sister's Son's Wife.
	relictæ.		
af.	Neptis uxoris ex	29	Wife's Brother's
	fratre.		Daughter.
af.	Neptis uxoris ex so-	30	Wife's Sister's
	rore.		Daughter.

A Woman may not marry with her

<i>Secundus gradus in linea recta ascen- dente.</i>			
Con.	Avus.	1	Grandfather.
af.	Aviæ relictus.	2	Grandmother's Husband.
af.	Profocer, vel focer magnus.	3	Husband's Grand- father.
<i>Secundus gradus in- æqualis in linea transversali ascen- dente.</i>			
Con.	Patruus.	4	Father's Brother.
Con.	Avunculus.	5	Mother's Brother.
af.	Amitæ relictus.	6	Father's Sister's Husband.
af.	Materteræ relictus.	7	Mother's Sister's Husband.
af.	Patruus mariti.	8	Husband's Father's Brother.

A Woman may not marry with her

af.	Avunculus mariti.	9	Husband's Mother's Brother.
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*Primus gradus in
linea recta ascen-
dente.*

Con.	Pater.	10	Father.
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af.	Vitricus.	11	Stepfather.
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af.	Socer.	12	Husband's Father.
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*Primus gradus in
linea recta descen-
dente.*

Con.	Filius.	13	Son.
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af.	Privignus.	14	Husband's Son.
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af.	Gener.	15	Daughter's Hus- band.
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*Primus gradus æ-
qualis in linea
transversali.*

Con.	Frater.	16	Brother.
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af.	Levir.	17	Husband's Brother.
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af.	Sororis relictus.	18	Sister's Husband.
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*Secundus gradus in
linea recta de-
scendente.*

Con.	Nepos ex filio.	19	Son's Son.
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Con.	Nepos ex filia.	20	Daughter's Son.
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af.	Progener, i. e. re- lictus neptis ex filio.	21	Son's Daughter's Husband.
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af.	Progener, i. e. re- lictus neptis ex filia.	22	Daughter's Daugh- ter's Husband.
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af.	Privigni filius.	23	Husband's Son's Son.
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af.

A Woman may not marry with her

af.	Privignæ filius.	24	Husband's Daughter's Son.
<i>Secundus gradus inæqualis in linea transversali descendente.</i>			
Con.	Nepos ex fratre.	25	Brother's Son.
Con.	Nepos ex forore.	26	Sister's Son.
af.	Neptis ex fratre relictus.	27	Brother's Daughter's Husband.
af.	Neptis ex forore relictus.	28	Sister's Daughter's Husband.
af.	Leviri filius, i. e. nepos mariti ex fratre.	29	Husband's Brother's Son.
af.	Gloris filius, i. e. nepos mariti ex forore.	30	Husband's Sister's Son.

Set forth by the Most Reverend Father in God
Matthew Parker, Archbishop of Canterbury,
Primate of England and Metropolitan, 1563.

N^o XIII.

EXTRACT out of the Acts for Burying in Wcollen, so far as they concern the Minister.

Anno 30 Car. II.

IT is *Enacted*, That all Persons in Holy Orders, Deans, Parsons, Deacons, Vicars, Curates, and their, or any of their Substitutes, do within their respective Parishes, Precincts, and Places, take an exact Account, and keep a Register of all and every Person or Persons buried in his or their respective Parishes or Precincts, or in such common Burial-places as their respective Parishioners are usually buried. And that some one or more of the Relations of the Party deceas'd, or other credible Person, shall, within eight Days next after such Interment, bring an *Affidavit* in Writing, under the Hands and Seals of two or more credible Witnesses (and under the Hand of the Magistrate or Officer before whom the same was Sworn, for which nothing shall be paid to the Minister or Parson, That the said Person was not put in, wrapt, or wound up, or buried in any Shirt, Shift, Sheet, or Shroud, made or mingled with Flax, Hemp, Silk, Hair Gold or Silver, or other than what is made of Sheep's Wool only: or in any Coffin lined or faced with any Cloth, Stuff, or any other thing whatsoever, made or mingled with Flax, Hemp, Silk Hair, Gold or Silver

Silver, or any other Material but Sheep's Wool only.

And in case no such *Affidavit* shall be brought to the Parson or Minister where the said Party was Buried, as aforesaid, within the said eight Days, That such Parson or Minister shall forthwith give, or cause notice thereof to be given in Writing under his Hand, to the Church-Wardens or Overseers of the Poor of such Parish.

And in case any Parson or Minister shall neglect to give notice to the Church-Wardens or Overseers of the Poor, as aforesaid, or not give unto them a Note or Certificate under his Hand, testifying that such an *Affidavit* and Certificate was not brought to him within the time limited by this Act, concerning the Party's being interred according to the Directions thereof: he so neglecting or offending, shall forfeit for every such Offence, the Sum of Five Pounds of lawful Money of *England*, to be recovered by such Person as shall sue for the same, by Action of Debt, Bill, Complaint or Information, wherein no *Essoign*, Wager of Law, or Protection shall be allowed, and wherein also the Prosecutor shall recover his full Costs, so as the Suit be commenced within Six Months after the Offence shall be committed.

And it is farther Enacted, That the Parson or Minister of every Parish shall keep a Register in a Book, to be provided at the Charge of the Parish, and make a true Entry of all Burials within his Parish, and of all *Affidavits* brought to him, as aforesaid, within the time limited, as aforesaid: And where no such *Affidavit* shall be brought to him within such time, that he

enter a Memorial thereof in the said Registry, against the Name of the Party Interred, and of the time when he notified the same to the Church-Wardens or Overseers of the Poor.

N^o XIV.

By an Additional Act for Burying in Woollen.

Anno 32. Car. II.

IT is Enacted, That if no Justice of the Peace shall reside, or be to be found in any Parish, where any Party shall be Interred, the Parsons, Vicars and Curates, in every Parish or Chapel of Ease within the County where any Party shall be Interred (except only the Parson, Vicar, and Curate of the Parish or Chapel of Ease where the Party is Interred, concerning whose Interment in Woollen *Affidavit* is to be made) are authorized and required to administer the Oaths or *Affidavits* to be made of any Persons being interred in Woollen, according to the Directions of the foresaid Act; and to attest the same under their Hands *gratis*.

N^o XV.

N^o XV.

An Extract from the Act for Briefs, concerning that Part of it which concerns the Minister.

FROM and after the five and twentieth Day of *March*, which shall be in the Year of our Lord, One Thousand seven hundred and six, upon the Issuing forth of Letters Patents for Collecting of Charity Money, commonly call'd Briefs, Copies thereof to the Number required by the Petitioners for such Briefs or their Agents, and no more, shall be printed by the Printer of Her Majesty, Her Heirs or Successors only, at the usual Rates for Printing; and by such Printer the whole Number of such Copies shall be delivered to such Person or Persons only, as shall, by and with the Consent of the Petitioners for such Brief, or the Major Part of them, undertake the laying or disposing such printed Copies, in order to the Collection of the Monies to be received thereon, or to some or one of them, who, or one or more of them, shall give a Receipt for the same, expressing the Number thereof in such Receipt, which Receipt, or an attested Copy thereof, such Printer shall forthwith deliver to the Register of the Court of *Chancery* to be filed in the Register's Office, and thereupon the Person or Persons so undertaking such Collection, or some or one of them, shall cause all the said Printed Copies to be endorsed

or marked in some convenient Part of such Printed Copy, with the Name of one or more of the Trustees or Commissioners named in such Letters Patents, written with his or their own Hand, and the time of signing the same, and also cause the said Printed Copies to be stamped in the manner hereafter more particularly mentioned: And the said whole Number being so signed, shall be, with all convenient speed by the said Undertaker, or Undertakers, sent and delivered to the respective Church-Wardens, and Chapel-Wardens of the respective Churches and Chapels, and to the respective Teachers and Preachers of every separate Congregation, and to any Person who hath Taught or Preached in any Meeting of the People called *Quakers*, in the Counties and Places to be comprised in such Letters Patents, to be read and published, and the Charity thereon to be collected in the several Churches, Chapels, or Places of Meeting to which they belong, who shall so receive the same; and that the said Church-Wardens, Chapel-Wardens, Preachers, Teachers, and *Quakers* having Taught, as aforesaid, immediately after such Receipt, shall endorfe the time of his or their receiving the same, and set his or their Names thereto; and the said Church-Wardens and Chapel-Wardens shall forthwith deliver over the said Printed Briefs by them received, to the several Ministers and Curates of the said Churches or Chapels, who shall receive the same; and the said respective Ministers and Curates shall, on Receipt thereof, endorfe the time they respectively received the same, and set their respective Names thereto; and the said
respe.

respective Ministers and Curates, Teachers, Preachers and Persons call'd Quakers, qualified as aforesaid, shall, on some *Sunday*, within two Months after Receipt of such Copies, immediately before the Sermon, Preaching or Teaching shall begin, openly read or cause to be read such printed Briefs in their respective Churches, Chapels, and Places of Meeting, to the Congregation there assembled: and the respective Church-Wardeus, Chapel-Wardens, and Teachers of every such separate Congregation, and such Persons call'd Quakers, to whom the Briefs shall have been so delivered, as aforesaid, shall collect the Sums of Money that shall be freely thereon given, either in the said respective Assemblies, or by going from House to House of the Members of their respective Congregations, as the Briefs shall require in that behalf; and on every such Collection made, the Sum that shall be collected, with the Place where, and time when the same was collected, shall be endorsed, fairly written in Words at length, on such respective printed Briefs, and signed by the Minister or Curate, and the Church-Wardens in Churches and Chapels, and by the Teacher and two Elders, or two other substantial Persons of every separate Congregation; and that thereupon the said respective Church-Wardens and Chapel-Wardens, and the respective Teachers or Preachers, or other Persons required to make the Collection, as aforesaid, on request of such Person or Persons as shall undertake to place and disperse the Briefs, as aforesaid, or of any Person by them or any of them lawfully authorized, shall deliver to such Person or Persons,

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making such Request, the respective Printed Briefs so endorsed, as aforesaid, and the Monies thereon collected, taking a Receipt for the same, from the Person so receiving such Monies, in some Book to be kept for that Purpose, on pain that every the said Ministers, Curates, Teachers, Preachers, Church-Wardens, Chapel-Wardens and Quakers qualified and required, as aforesaid, who shall refuse or neglect to do any of the Matters or Things before respectively required of them, shall forfeit the Sum of Twenty Pounds, to be recovered and applied as herein after is directed; and the said Person or Persons who shall so undertake to place, and disperse the said Briefs, as aforesaid, shall within six Months next after the respective placing or delivering such Copies in the respective Parishes, as aforesaid, by themselves or some or one of them, or by some Person or Persons by them, or the major Part of them to be appointed, as aforesaid, demand from the respective Church-Wardens, and Chapel-Wardens of Churches and Chapels, and from the Preacher and Teacher of separate Congregations, or from such Teaching Quaker to whom the said printed Briefs, shall have been respectively delivered, as aforesaid, the printed Briefs so left with him or them respectively, and the Monies respectively by them received thereon; and on Delivery and Payment made, shall give to them respectively, as aforesaid, a Receipt for the same, on pain to forfeit the Sum of twenty Pounds, to be recovered and disposed of, as herein after is directed.

In each Parish, or Chapelry, and separate Congregation, a Register shall be kept by the Minister or Teacher there, or by some Teaching Quaker, of all Monies collected by Virtue of such Briefs, therein also inserting the Occasion of the Brief, and time when the same was collected, to which all Persons at all times may resort without Fee.

And for the better endorsing what Money is collected on the back of the printed Briefs, and for the more regular Examination thereof, and for the preventing the Counterfeiting printed Copies of the Briefs, by which great Frauds have been put in Practice; be it enacted by the Authority aforesaid, that on the back of every printed Copy of such Brief, there shall be printed the Form of Indorsment with the necessary Blanks for Time, Place, and Sum of Money, to be filled up by the respective Persons aforesaid; and each printed Copy of such a Brief, shall, before it be carried to the respective Parishes wherein the Collection is to be made, be stamped or marked with a proper Stamp to be made for that Purpose, and kept by the Register of the Court of Chancery, who is to see that no greater Number of printed Copies be stampd, or marked therewith, than is in the Receipts given to the Printer, and left with the Register as aforesaid, specified and declared; and if any Person or Persons shall forge or counterfeit such Stamp, such Person being thereof lawfully convicted, shall be publickly set on the Pillory, for the space of one whole Hour.

Provided always, That where any Penalties are by this Act inflicted on any Person or Persons other than the Undertakers, their Agents, Deputies Substitutes or Servants, such Penalties shall be recovered by Action of Debt, Bill, Plaint, or Information.

And whereas there hath been an evil Practice in Farming and Purchasing for a Sum of Money, the Charity-Money that should or might be collected on such Briefs, to the very great Hindrance and Discouragement of Almshousing on such Occasion: Be it therefore enacted by the Authority aforesaid, and it is hereby declared, that all farming and purchasing of such Charity Money, is unlawful, and that from and after the aforesaid five and twentieth Day of *March*, if any Person or Persons shall purchase or agree for any Charity Money to be collected on any Briefs or Letters-Patents, or by any Instrument of Covenant or Agreement, by way of Farming, shall or may pretend to appropriate such Charity Money, or any part thereof, to his or their Use, contrary to the Intent and Meaning of such Letters-Patents, by which such Charity-Money shall be collected, and contrary to the Intent and Meaning of this Act, such Purchase and Instrument of Covenant and Agreement, shall be void, and each Person agreeing to purchase the Benefit of such Brief shall forfeit the Sum of Five hundred Pounds, to be applied for the Benefit of the Sufferers in such Letters-Patents mentioned, and to be recovered, as before last mentioned.

Nº XVI.

*A Table of the Archbishops and Bishops of
England and Wales.*

Province of Canterbury.

DR. *William Wake*, Lord Archbishop of
Canterbury.

Dr. *Edmund Gibson*, Lord Bishop of *London.*

Dr. *Richard Willis*, Lord Bishop of *Winchester.*

Dr. *John Hough*, Lord Bishop of *Worcester.*

Dr. *John Wynn*, Lord Bishop of *Bath and
Wells.*

Dr. *John Potter*, Lord Bishop of *Oxford.*

Dr. *Benjamin Hoadly*, Ld Bishop of *Salisbury.*

Dr. *Edward Chandler*, Ld. Bishop of *Litchfield
and Coventry.*

Dr. *Samuel Bradford*, Ld. Bp. of *Rochester.*

Dr. *Thomas Green*, Lord Bishop of *Ely.*

Dr. *Richard Reinolds*, Lord Bishop of *Lincoln.*

Dr. *Joseph Wilcox*, Ld. Bp. of *Gloucester.*

Dr. *William Baker*, Lord Bishop of *Norwich.*

Dr. *Henry Egerton*, Ld. Bp. of *Hereford.*

Dr. *Rich. Smallbrook*, Ld. Bishop of *St. David's.*

Dr. *Edward Waddington*, Ld. Bp. of *Chichester.*

Dr. *William Bradshaw*, Lord Bishop of *Bristol.*

Dr. *Stephen Weston*, Ld. Bishop of *Exeter.*

Dr. *Robert Clavering*, Ld. Bp. of *Peterborough.*

Dr. *Francis Hare*, Lord Bishop of *St. Asaph.*

Dr.

Dr. *Thomas Sberlock*, *Ld. Bp. of Bangor.*

Dr. *John Harris*, *Lord Bishop of Llandaff, and Dean of Hereford.*

Province of *York.*

Dr. *Lancelet Blackborne*, *Lord Archbishop of York.*

Dr. *William Talbot*, *Lord Bishop of Durham.*

Dr. *John Waugh*, *Lord Bishop of Carlisle.*

Dr. *Samuel Peploe*, *Lord Bishop of Chester.*

Dr. *Thomas Wilson*, *Lord Bishop of Man.*

Bishops Sees in *Scotland.*

St. Andrews, *Archbpr.*

Dunkeild.

Aberdeen.

Murray.

Brichen.

Ross.

Cathness.

Orkney.

Glasgow, *Archbishop.*

Galloway.

Argyle.

The Isles.

Supplebit Deus.

Bishops

Bishops and Bishopricks in *Ireland*.

- Dr. *Hugh Boulter*, Lord Archbishop of *Armagh*, and Primate of all *Ireland*.
 Dr. *John Hoadly*, Archbishop of *Dublin*, and Primate of *Ireland*.
 Dr. *William Palliser*, Lord Archbishop of *Cashell*, and Primate of *Munster*.
 Dr. *Edw. Synge*, Lord Archbishop of *Tuam*, and Primate of *Ulster*.
 Dr. *Lambert*, Lord Bishop of *Meath*.
 Dr. *Timothy Goodwin*, Lord Bishop of *Kilmore* and *Ardagh*.
 Dr. *Bolton*, Lord Bishop of *Elphin*.
 Dr. *Arthur Price*, Lord Bishop of *Ferns* and *Lagblin*.
 Dr. *Lord Bishop of Clonsfert*.
 Dr. *Thomas Milles*, Lord Bishop of *Waterford* and *Lismore*.
 Dr. *Howard*, Lord Bishop of *Killala* and *Ackenry*.
 Sir *Thomas Vesey*, Lord Bishop of *Offory*.
 Dr. *Ch. Cobb*, Lord Bishop of *Dromore*.
 Dr. *J. Sterne*, Lord Bishop of *Clogher*.
 Dr. *Wm. Burscough*, Lord Bishop of *Limerick*.
 Dr. *C. Carr*, Lord Bishop of *Killalow*.
 Dr. *T. Forrester*, Lord Bishop of *Raphoe*.
 Dr. *Fr. Hutchinson*, Ld. Bp. of *Down* and *Connor*.
 Dr. *P. Brown*, Lord Bishop of *Cork* and *Ross*.
 Dr. *Welbore Ellis*, Lord Bishop of *Kildare*.
 Dr. *D. Maule*, Lord Bishop of *Cloyne*.
 Dr. *H. Downes*, Lord Bishop of *Londonderry*.

Counties

N^o XVII.

Counties in which if any Living become vacant in the Patronage of a Papist, the University of Oxford shall present, viz.

Oxford, Kent, Middlesex, Sussex, Surry, Hampshire, Berkshire, Buckinghamshire, Gloucestershire, Worcestershire, Staffordshire, Warwickshire, Wiltshire, Somersetshire, Devonshire, Cornwall, Dorsetshire, Herefordshire, Northamptonshire, Pembrokeshire, Caermaribenshire, Brecknockshire, Monmouthshire, Montgomeryshire, City of London.

Counties in which if any Living fall vacant in the Patronage of a Papist, the University of Cambridge shall present, viz.

Hertfordshire, Bedfordshire, Cambridgeshire, Essex, Huntingdonshire, Suffolk, Norfolk, Lincolnshire, Rutlandshire, Leicestershire, Derbyshire, Nottinghamshire, Shropshire, Cheshire, Lancashire, Yorkshire, Durham, Northumberland, Cumberland, Westmorland, Radnorshire, Denbighshire, Flintshire, Carnarvonshire, Anglesey, Merionethshire, Glamorganshire. Stat. 3 Jac. c. 5.

A D.

ADDENDA.

PAGE 216, Line 22. Insert this Paragragh.

But tho' 7th *Kalend* should be before 6th *Kalend*, it does not therefore follow that *Bissexus* should be before *Primo-Sextus*. When we write 7 *Kalend*, 6 *Kalend*, we do not mean the 7th *Kalends*, and 6th *Kalends*, but the 7th Day before the *Kalends* of *March*, the 6th Day before the *Kalends* of *March*. And this is natural and agreeable to the true Order of Things. For the 7th Day before the *Kalends* of *March*, must in real Series of Time be past and gone, before the 6th can possibly be come. But, if we suppose a *Dies Bissexus* before the *Kalends*, while there hath not yet been a *Dies Primo-Sextus*, this is quite contrary to Nature, and the Order of Time. It is to say a Thing may be twice before it hath been once. When I say the Computation of the *Kalends* is retrogradous, I only mean that the Figures denoting the Days before the *Kalends* are set in a retrogradous Order, but still in such an Order as is agreeable to the true course of Time. *Bis dicitur sexto Kalend*, says *Clavius*. Sure we must first say, or write simply *sexto Kalend* on the 24th Day, before we can say, or write *Bissexus Kalend* on the 25. And *Bissexus* is but another Name for the Intercalary Day.

I am

A D D E N D A.

I Am sorry to have any Difference with the Learned Mr. *Wheatly*; but since in some Points I cannot think as he does, I shall in a few Words as I can, offer my Reasons to the contrary.

I have asserted that all proper Feasts were of old esteemed to begin at *Vespers*, or six a Clock in the preceding Evening. And this is so certain, that no one does, or can deny it. I have observed that on this foot it might justly be said in the Eve to the *Purification*, Christ was *this Day* presented in the Temple. Mr. *Wheatly* excepts against this, because this Collect is now commonly used before six a Clock on the Eve to the *Purification*. And he adds, *his Judgment is, that the Day*, meaning the Holy-Day, *does not now begin at Vespers*. Therefore the Question between us, is simply this, Whether very ancient Forms of Prayer made many hundred Years before the Reformation, (such is the Collect for the *Purification*) may best be interpreted by the Notions and Practices of the Men of this Age, or of those who lived when those Forms were compos'd.

I agree with Mr. *Wheatly*, that St. *Matthias* is to be kept on *February 24.* on Leap-Years, as well as others. But I have affirmed the 25th to be the *Bissextile* or *Intercalary-Day*: because there cannot be a second Sixth, before there hath been a first Sixth. I have been told that the two six Kalends are to be reckon'd backwards. But the old Computists reckon'd the 25th

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25th Day to be the latter of the two Sixths, according to the known Verse, *Posteriore die celebrantur Festa Martiæ*: and yet they reckon'd by the Kalends, not by our *English* Account. The foregoing Verse shews this, *viz. Bissextum sextæ Martis tenuere Kalendæ*. But farther, in *Cowel's Interpreter*, at the Word *Bissext*. we have a Statute, 21 Henry III. cited in these Words, *The Day encreasing in the Leap-Year, and the Day going next before, shall be accounted but one Day*. The two Days to be accounted but one, are on all Hands agreed to be the 24th and 25th. Therefore, by this Statute the 25th is the *Encreasing*, or Intercalary Day. But the Revisors of the Common-Prayer-Book in Queen *Elizabeth's* Reign, made the 23d and 24th, the two Days to be accounted one. How does that appear? Why, because they appointed the same Psalms, and Lessons for both Days. I answer, so did our first Reformers in King *Edward's* Reign, appoint the same Psalms and Lessons for the 25th and the 26th Day. Both these Rubricks are now expunged, but the Statute remains in full Force. And while they stood in the Book, they proved nothing as to the Point in hand. To argue from either of these Rubricks against the Statute, is to argue from what is obscure, and utterly uncertain, against what is plain and evident. I am not concerned to assert that the old Heathen *Romans* did so reckon. That I leave in *medio*.

Mr. *Wheatly* would have *February* 29th, to be now with us the Intercalary Day, and therefore expungeth the 2d 4, and 2d 6 Kalend standing against *February* 25. on the Leap-Year,
and

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and will put Letter *C* with *Prid. Kalend.* both to *February* 28th and 29th. By this means we shall have a *Bissextile* Year without *Bissextile* Kalend. And instead thereof we shall have a *Bis. Prid. Kalend.* I need say no more.

Tho' *St. Matthias's* Day be placed at *Feb.* 25th in two Editions of the Liturgy of *Queen Elizabeth's* Reign, viz. in the Years 1585, and 1601, and perhaps in others not yet discovered; and in five or six Editions between her Reign, and the great Rebellion, so that I had some grounds for what I had said on this Point; yet I acknowledge I was too hastily led into an Opinion, that it was so fix'd by Authority. The worthy Mr. *Wheatly*, who informed me of the Book of 1585, *aut circiter*, that places *St. Matthias* on the 25th, and of several other Books of *King James's* and *King Charles's* Reign, which do the same, hath with all observed, that the proper Lessons for *St. Matthias's* Day do even in these Books stand against *February* 24. And I find his Observation holds in all the Books which I have seen. Therefore I thank Mr. *Wheatly*, and other Friends, for convincing me that this was only an *Erratum* of the Press.

As for *ipso facto* Censures, Mr. *Wheatly* will inform the Reader in an Assument of his own, relating to these Matters, (which with my free Consent he inserts into this Book,) how near he comes to me in this Point, yet he still insists, that "a Man cannot be treated as Excommunicate, before he is actually convicted, and declared to be Excommunicate." But *Lyndwood* informs us, that the Doctrine of the *Canonists*

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nists was directly contrary to this, (*De Sentent. Excom. c. præterea. v. cum Excommunicatis*, pag. 352.) If the Excommunication be wholly bidden, so that it cannot be proved, as because one Man only knows it, (whereas the Law requires two Witnesses to every Fact,) then he ought to avoid the Party in private, tho' not in publick. But if the Excommunication be publick, because the Man hath been publicly denounced, or judicially convicted, or is so Excommunicated, that he may be convicted, (there being two, or more Witnesses to the Fact,) then every one that knows it, ought to avoid him. And observe, that a Man is said to know another to be Excommunicated, when he sees him strike a Clerk in a Case forbidden by Law; or to do any thing, by which Excommunication is incurred, *ipso facto*. Now if a Man is to be avoided as already Excommunicated, who may be convicted of the Fact, whereby he incurred that Censure, tho' the Offender was not yet actually convicted; nay, if the one only Man, who knew the Fact, was to avoid him in private, tho' he was incapable of being convicted for want of sufficient Evidence, then I think it indisputably clear, that he, who had committed a Fact, by which such Excommunication was incurr'd, was not only Excommunicate, but treated as Excommunicate before he was convicted. By inevitable Consequence, if a Curate and his Parishioners did know any Person to absent himself from Church, and go to Schismatical Meetings, they were to treat him as Excommunicate, both living and dying, upon Supposition, that *ipso facto* Excommunication,

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tion, were the Punishment for that Practice. For this is a Fact or Complication of Facts, which cannot but be notorious. Granting that another Man was not liable to be punished in the Ecclesiastical Court for conversing with the Excommunicate, till he had been denounced; yet still he, who knowing him to be excommunicate, and capable of being convicted, did treat him as one already excommunicate, was so far from being blameable, that he did his Duty according to the strictest Casuistry of the Disciplinarians of those Ages. No Conviction was necessary, but where the Fact was dubious, or however not notorious. The Declaration was principally intended for the making those who conversed with the Excommunicate inexcusable, and to render the Criminal subject to a *capias* at the Common-Law.





To the Reverend
M^R. J O H N S O N.

Reverend Sir,

BY the Opportunity you have given me of revising my Objections to your Notions of *ipso facto Excommunication*, I begin to think that the Truth lies between us, and that we are both of us mistaken. Upon your calling me now to Second-Thoughts, I am inclin'd to believe, that there is really a Difference in the Distinction you make, between being *Excommunicated*, and being *declar'd Excommunicate*. I therefore ask your Pardon for the Note I had inserted in pag. 498, of my last *Octavo* Edition of my *Illustration of the Common Prayer*, and beg that you would give me leave publickly to retract it. And if you could afford me room enough in your Preface, I should be further oblig'd to you, if you would let me correct my Notions a Page or two before, beginning at the ninth Line of Page 466. according to the *Folio*, or at the third Line from the bottom of Page 495, according to the *Octavo*: Where I would have my Account of *ipso facto Censures* express'd thus.

S

“ For

To the Reverend

“ For *Constitutio Sententiæ latæ* may signify,
“ that the Criminal, as soon as ever he is con-
“ victed and found guilty of the Crime alledg’d
“ against him, incurs the Penalty inflicted by
“ the Canon, without any further Sentence
“ pronounc’d, than a Declaration that he actu-
“ ally is, and has been under the Censure of the
“ said Canon: Whereas, *Constitutio Sententiæ*
“ *ferendæ* may require not only that the Cri-
“ minal should be convicted, but also that af-
“ ter his Conviction the Sentence shall be pro-
“ nounced solemnly and in Form, notwithstanding
“ the Canon may expressly declare what the
“ Punishment shall be. And this I take to be
“ the Sense in which *Lyndwood* and other
“ Lawyers understand it, whom certainly we
“ must allow to be the best Judges in the Case.
“ And this will explain what Mr. *Johnson* ob-
“ serves the *Canonists* say, viz. that *Excommu-*
“ *nificatio ipso facto*, is, *Excommunicatio facta*
“ *nullo Ministerio Hominis interveniente*; that
“ an *ipso facto Excommunication*, is an Excom-
“ munication that takes Effect without the
“ Intervention of any Man’s Ministry. For
“ whenever a Canon says, that a Criminal is *ip-*
“ *so facto Excommunicated*, the Excommuni-
“ cation takes Place as soon as he is tried, and
“ found guilty of the Crime, without any ones
“ pronouncing any other Sentence upon him,
“ than that by virtue of his Crime, he is, and
“ has been excommunicated by the Canon; and
“ that not only from the Time that he is prov’d
“ convict, but from the very Time that he
“ committed the Fault. Inſomuch that all the
“ Advantages, Penalties and Forfeitures that
“ may

Mr. JOHNSON.

“ may be taken and demanded of a Person ex-
“ communicated, may be taken and demanded
“ of such a Person, quite back to the Time
“ when he committed the Fact, for which he is
“ now declar’d Excommunicate. But still,
“ tho’ a Criminal becomes liable to this Cen-
“ sure, from the very Instant he commits the
“ Crime; yet he cannot legally be proceeded
“ against, nor treated as Excommunicate, be-
“ fore he is actually convicted and declar’d so to
“ be. It is true, the Canonists suppose that a
“ Man may, and ought to *shun the Company* of
“ one, whom he knows to have incurr’d Ex-
“ communication: But private Conversation
“ is what any one may withhold from whom-
“ soever he pleases, and what therefore a Man
“ ought to withhold from such a one as he
“ knows, or believes he is able to convict of
“ having incurr’d a greater Penalty. But this
“ does not affect the Question between Mr.
“ *Johnson* and me. The Question between us
“ is about denying a Man the Sacraments and
“ publick Offices of the Church, which the
“ Canonists assert, every Man may claim, till
“ it appears legally that he has forfeited his
“ Right to them. (*Decret. Part 2. Caus. 6.*
“ *Quæst. 2. c. 3. verb. placuit.*) And therefore,
“ which is the principal Point here concern’d,)
“ no Man can be refus’d Christian Burial, how-
“ ever subject he may have render’d himself to
“ an *ipso facto* Excommunication, unless he
“ has been formerly tried and convicted, and
“ actually pronounc’d and declar’d Excommu-
“ nicate, and *no Man is able to testify of his*
S 2 “ *Re-*

To the Reverend

"*Reppentance.*" And so on, as in *pag.* 468. *Folio*, 498. *Octavo*.

Thus far, Sir, I very readily advance to meet you, and this is the only material Point in Dispute between us. We differ a little about two Points more, *viz.* At what *Hour* our present *Ecclesiastical Day* begins; and which Day in *Leap-Years* was anciently esteem'd the Day of *Intercalation*. But tho' these are Questions of which I can't have the Satisfaction to be on the same side with yourself; yet I believe you will agree with me, that neither side is worth contending for. And therefore we may leave the Reader to chuse which Opinion he pleases, without troubling either them or ourselves any further. However, as I am now begging your Assistance to mend my Faults, be pleas'd to let me mention two blunders more. At the bottom of the 50th Page in the *Folio*, or of the 51st in the *Octavo*, there is a Note which wants to be corrected thus.

" In the common Almanacks the Letter F is
" set against the 24th and 25th of *February*;
" the 24th having been formerly accounted the
" *Intercalary Day*: But our Church at present "
And so on,

The other Mistake is in the *Octavo* only, in Page 257, *lin.* 24, 25. where the 23d of *February*, *i.e.*—Should be blotted out, or else the 24th of *February*, *i.e.* should be read instead of it. For as the *sixth Calends of March* stands against *February* the 24th, and as the Day of *Intercalation*, (which was also call'd the *Sixth of the Kalends*) was inserted, (*i.e.* according to my Opinion,) the Day before; I think we may rather

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rather call them two 24th Days, than two 23ds. Tho' it is plain that the Rubrick, from the Accession of Queen *Elizabeth* to the Restoration of King *Charles*, order'd the Service for the 23d Day to be repeated. And it was my Attention upon that, I suppose, which led me into the Mistake.

You will excuse me, Sir, I hope, for the Trouble I give you, since it proceeds from an ingenuous Disposition, to submit wherever I find myself to be mistaken, rather than to persist in an Error when known.

I am,

London,
Aug. 6. 1722.

Reverend SIR,

Your Most Oblig'd

and Obedient Servant,

CH. WHEATLY.



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